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A

Summary View

OF THE

Feudal Law,

With the Differences of the Scots Law
from it;

Together with a

Dictionary

Of the select Terms of the Scots and
English Law, by way of Appendix.

by
John Dundas (H. & L.)

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P R E F A C E

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Laws.

Rec. Oct. 11, 1882

P R E F A C E.

IN all Ages there hath been some who have been sent as, a Plague and a Curse to Mankind, by offended Heaven, who have behaved as Tygers and Lyons, without minding the end for which they were plac'd in power, which was to Protect and Defend their fellow-Creatures, who were at first created equal to them, and who have pretended another Foundation of Government, than the consent of the Society; yet it must be own'd that some of those Tyrants have been the Authors of very good Laws, as Honey sometimes is drawn from the bitterest of Herbs: tho' all of them have profess'd their Wills to be binding as

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Laws,

Laws, yet they could not but own, at the same time, that it is not below the Character of a Prince to submit to those Laws and Rules which he gives to others, *L. 4. C. de LL.* The Roman Tyrants have given us a good body of Laws, the Popes or Church Tyrants, who imposing upon the Consciences of Men are of all the worst, have given us a better and more reasonable; and the *Goths* and *Vandals*, or Northern Cut-throats, Robbers and Pirrats (otherways called Glorious Kings and Conquerors of the *Western* Empire) have left us their Laws and Customs so very reasonable, that all the Countries of Europe have made them the Basis and Foundation of their real Rights; and those that have receded most from these Customs, have so far unhinged their own real Securities. Receive then a Summary View of the Fewdal Law, or Customs of the *Goths* and *Vandals*,
without

without any Mixture, in Nineteen Chapters, with a Twentieth concerning the Differences of the *Scots* and *Federal* Law; as also a short Dictionary of some select Terms of Law by way of Appendix, which is thought by most Judicious and Learned People, who have been the Revisers of these Papers, a very fit Introduction to the Study of Real Rights and Securities in any part of Europe, especially in this place where *Craig* cannot be so useful, being written in *Latin*, which very many do not understand; beside *Craig* is both Prolix and Innovated by our later Decisions, and therefore not thoroughly read over by many, but only look't into upon particular occasions. If this Treatise shou'd happen to be less correct, the Reader would be pleased to give himself the trouble to mend the Errors, and excuse what is amiss, the Book being given in to be printed

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printed by a certain person when the
Author was out of Town, and knew no-
thing of the publishing of it, not hav-
ing design'd so soon to send it abroad
into the World.

CHAP. I.

Concerning the Original Authority, and use of the Fewdal Law.

THE Fewdal Law came in by the *Longabards, Franks* and other Northern people, who invaded *Italy* in the Reign of *Justin the II Anno Christi 568*, who as some affirm, borrowed something from the *Roman Law*.

This Consuetudinary Law was collected by some private Lawyer, whose Name is not known; tho' nam'd for sure by some.

This Law came in, I mean some part of it, by the tacite Consent of the people, and are called Customs. *l. 32 § 1 ff. de L. L.* An other part of it is the Constitutions of the Emperor *Lotharius. C. si vassalus de vas. qui contr. const. Lothar. 2 F. 38. C. imperialis de prohib. feudal. per Lothar. 2 F. 52.*

The Emperor *Conradus. C. Lex Conradi de lege Corrad. 2. F. 34. C. hac sunt de capp. Corrad. 2. F. 40.*

Henricus C. si vassalus, quot testes sunt necessarii. 2. F. 57. And Fredericus, [C. Fredericus de pace tenenda, &c. 2. F. 27. C. imperialem de prohib. Feud., al. per Frid. 2. F. 55. C. Regalia qua sunt Regal. 2. F. 56.

2 Of the FEUDAL LAW.

Another part of it, is the Answers or Decisions of the *Prudentes*, *Obertus*, *Gerhardus* and some more. These Men were Lawyers, who gave Answers in Intricacies of Law, in Imitation of those who were ordered and appointed to do so by *Augustus* of old.

For the Authority of it, it is the same with other Laws, and are only now binding, in so far as Custom hath approven them, that they are authentick. The strongest Argument is, they have always been thought so, received as such in several places of *Germany*, and taught in the Universities; and since we are told by the Collectors of them that they are such, is not as much Credit to be given to them, as any other Historians?

Their use is, to decide Causes, and so put an end to strife.

The Causes are Feudal, or such as resemble them, as *Emphyteusis*, *Usufruct*, and such like: For it is certain, that Laws are extended to several cases, which were not in view at making them, *l. 10. l. 11. & 12. ff. de L. L.* and in such Causes, even Ecclesiasticks are subject to this Law, which the Pope owns, when he remits the Clergy to the Laicks in *c. ex Transmissa. 6. & c. sequ. extr. de for. comp.*

CHAP. II.

Of the Definition of a Few.

THE Word Few, comes from the Latin Word *Fides*, in English Faith, Faithfulness being always required as Essential to a Vassal. C. *quia* § 1 & 2 de *his qui feud. dar.* 1 F. 1. C. *quia supra quib. mod. Feud. amitt.* 1 F. 5 &c. *si contentio de content. int. dom. & vassal.* 1 F. 10, C. *qualiter autem, qual. jurar. deb. Vassal.* 2 F. 5 C. *in epistola de form. fidel.* 2 F. 6.

Having explained the Word, I define a Few thus, "It is a certain sort of an usufruct of a thing Immoveable, granted by the Master, out of Kindness, and Benevolence, and Good-Will, upon condition of Fidelity, Reverence, Honour, and Respect. By the Feudalists, it is taken three Ways. 1^{mo}. For the thing given in Few. 2^{do}. For the Concession it self. 3^{tio}. For the Right constitute by the Grant or Concession; Hence proceed so many different Definitions of a Few. I take it for a Right constituted.

The Word *Usufruct*. I put as the *Genius*, or Kind in general, C. *Obertus*. 2 F. 23. I add a certain sort, because this *Usufruct*. contains many things singular.

A thing Immoveable, or such things as are esteemed as such: I mean things Incorporeal. C. *Obertus* §. fin. F. 1.

Kindness Benevolence &c.

4 Of the DEFINITION

Love is the occasion of the Grant. *si quis de feud. dat. invic. leg. commiss. 1. F. 27. C. Obertus 2. F. 23.* Altho it be a Benefit, it needs not always be Gratuitous *l. 3 in fin. ff. de obseq. parent. & patron. prestand.*

Reverence, Honour and Respect.

The word Fidelity is too general; therefore I add them, *Tit. ff. de obs. parent. & patron. prestand.*

From the Definition so illustrated, you may easily observe the Marks of a true Few, and the Differences from other Rights that resemble it.

The first thing required in a Few is, that the Lord or Granter remain still Proprietar, but that the Usufruct be the Vassals. *C. Obertus 2. F. 28.*

Secondly, that the Right be of a thing Immoveable, or the æquipollent. *C. Obertus. de Feud. Cognit. 2. F. 1.*

Thirdly, that it proceed from Love and Kindness in the Granter. *C. si quis de feud. dat. invic. leg. commiss. 1. F. 27.*

Fourthly, Fidelity is required, which I have already proven.

The Rights which resemble Fews, are *Usufruct*, *Emphyteusis*, *Superficies* or *Surface*, and *Dos* or *Dowry*, and the Right which a *Bona fidei possessor*, or one who possesses thinking himself lawful Master, hath.

Usufruct differs from a Few. 1^{mo}. That *Usufruct* is oft in Moveables, *S. 2. Just. de usufructu.* But a Few must be in Immoveables *C. Obertus 2. F. 1.*

2^{do}. *Usufruct* does not require Fidelity, which is Essential in Fews.

Of a FEW.

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3tio. He who hath the *Usufruct*, or use of the Fruits, or (to speak as near as we can to our Law) *Liferent*, may sell his Right or gift it to another. l. 28. & sequ. & l. 67. ff. de *Usufructu*: but the Vassal cannot alienate his Few C. *Ofla* §. *donare*. 1. *Qualiter olim pot. feud. alien.* 2. *feud.* 9. *Emphyteusis*, agrees in so far with a Few, that both are Rights much like Property; But they differ. 1mo. That in one, a certain yearly Pension must be payed to the Granter. §. *adeo* 3. *Inst. de locat. & Conduct.* But the Vassal is obliged only to Fidelity. 2do. *Emphyteusis* goes to every Heir, and even to those who are not of the Family. L. *si Domus*. 71. §. *fin.* ff. de *legat.* 1. l. 10. de *locat.* But a Few goes regularly, only to Agnats or Kinsmen by the Fathers side, to Men and not Femals. 3tio. In one, the Right can be given or transferred to another, without so much as asking the Consent of the Granter. L. 3. c. de *Jure Emphyt.* but a Few cannot be alienated without Consent of the Granter.

Superficies, or Right to the face or surface, agrees in so far with a Few, that both are Rights near of Kin to Property; but they differ in this, that in one Fidelity is not required, tot. tit. ff. de *Superficiebus*: Which as said is, in Fews is required.

Dos or Dowry agrees with Fews a little: For the Husband reaps all the Fruit of the Wifes Estate. L. 7. pr. l. 10. §. 3. ff. de *Jur. Dot.* But they differ too, 1mo. That during the Marriage, the Husband is Proprietar of his Wifes Fortune, pr. *Inst. Quib. alien. licet.* The Vassal hath only the *Usufruct*. C. *Obertus*. 2. F. 23. 2do. When the Marriage is dissolved, the Husbonds Right expires.

L. 3.

L. 3. in fin. ff. de Jur. Dotium. But a Few is for Perpetuity, for most part, *c. Obertus. 2. F. 23.*

The Right of a *bona fidei possessor*, is just like a Few, as in the same Way, and for the same Reason as *Emphyteusis*, or *Superficies*, and because the Fruits and Emoluments belong to the *Bona Fidei Possessor*; but they differ. *1mo.* That the one can acquire the thing he possesses, by *Usucapion* and *Prescription*, *pr. Inst. de Usucap.* When a Vassal, who knows the Few to belong to another, can never acquire it in that manner. *2do.* The Vassal owes Fidelity to his Lord and Patron, but the *Bona Fidei Possessor* thinks himself Lord and owes none. *3tio.* The Superior cannot take away the Vassals Right, without some Crime. *Tot. tit. de feud. sine culp. non amitt, 1. F. 21.* But the Master may take away what belongs to him, from the *Bona Fidei Possessor*, without any Crime. *L. 9. & passim ff. de Rei Vind.*

CHAP. III.

Of Proper Fewes.

FEWES are Proper or Improper, Proper Fewes, are "Those which have the ordinary and proper nature of a Few, no way chang'd by Consuetude or Pactions, *c. natura feud. de nat. feud. 1. F. 7. c. investitura. 2. F. 2.* They are called too, Right Fewes. *c. sciendum de consuet. Rect. Feud. 2. F. 33.*

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What is proper to a Right Few, is 1^{mo}. That the Vassal must take an Oath to be faithful, *c. Investitura pr. per quos fiat Invest.* 2. F. 3. 2^{do}. After the death of the Vassal, his Heir, or after the death of the Superior, the Vassal himself, must within a year, ask his Investiture to be renewed, or new Seafine *C. prima a. 2. F. 24.* 3^{tio}. Personal Services must be performed. *C. Obertus in quib. caus. feud. amitt.* 2. F. 23.

4^{to}. Men must always succeed, and not Women. *C. sequitur §. 2. de succ. feud.* 1. F. 8.

5^{to}. Without a fault, the Few cannot be taken from the Vassal. *C. natura.* 1. F. 7. *c. sancimus. de feud. sine culp. non amitt.* 1. F. 21.

6^{to}. The Few cannot be alienated by the Vassal, without Consent of the Superior. *C. est a Qual. olim pot.* 2. F. 9.

7^{imo}. If the Few be evicted, the Superior is obliged to give another Few as good, and not the value in money, *c. cum de re Invest. de re al. fact.* 2. F. 8.

Proper Fews are subdivided, in Noble and Ignoble. *C. qui a pr. quis dicatur Dux &c.* 2. F. 10.

Noble Fews, are Those who are granted by one who hath power and will to nobilitat. There are two things then required. 1^{mo}. Power, such as of an Emperor or King.

2^{do}. Will to nobilitat, and this expressly declared in the Investiture or Seafine, or tacitly by Investing any Man in a Dukedome or Principality. *C. quia pr.* 2. F. 10.

Noble Fews are divided into Regal, and Not Regal.

Regal, are Those that are given by the Highest Power,

Power, with a Royal Dignity, such as Kingdoms, Dukedoms, &c. *C. Marchia*. 1. *F.* 14.

Not Regal, are Fews granted by the Prince, which are Noble, but are inferiour to Regal: They can be divided amongst Conjunct Heirs, if they consent, which Regal Fews cannot be. *C. imperialem* §. 1. *versic. praterea* 2. *F.* 55.

Any Superior in these Fews is Judge competent, in any Difference may happen. *C. imperialem* §. 1. *versic. praterea* 2. *F.* 55. Whereas in Regal, the Prince is only Judge. *C. si Contentio apud quem vel quos contravers. feud. defm.* 1. *F.* 18. *c. hac sunt de capp. Corrad.* 2. *F.* 40.

Ignoble Fews, are Those granted without design of Nobilitating by him who can do it, or by one that hath no power to do it.

Fews Ignoble, are subdivided, into Old and New. *C. Investitura per quos fiat Invest.* 2. *F.* 3. *c. Beneficium de Invest. Vet. & Nov. Benif.* 2. *F.* 91.

Old Fews, are Those which the Vassal hath from him, who first acquired the Few. *C. successionis versic. patern. de Nat. Success. Feud* 2. *F.* 50. They are called also Paternal. *C. si autem* §. 2. *si de Invest. feud, Controvers.* 1. *F.* 4. *c. si Contentio de Cont. inter me & Dominum &c.* 1. *F.* 12. *c. per successionem de success. fratr.* 2. *F.* 11. *c. si duo de fratribus de nov. benef. invest.* 2. *F.* 12. *c. quidam de vas. decrep. atat.* 2. *F.* 14. *c. vassalus de Invest. in marit. fact.* 2. *F.* 15.

A New Few, is That which a Man himself hath purchas'd. *C. siue Cler. versic. nov. qui test. sunt necess.* 2. *F.* 32. *c. duo frat. de duob. frat. a cap. Invest.* 2. *F.* 8.

This difference of Fews, produces different effects,

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fects, For 1^{mo}. In ancients Fews any may succeed, even Collaterals; in new Fews Descendants only. *C. per successionem. 2. F. 11. c. successionis. 2. F. 50. 2do*. Ancient Fews may be got immediatly by Succession; *c. obertus. S. sciendum de feud. cogn. 2. f. 1. c. successionem. 2. f. 11.* But in new Fews, Seafine or Investiture must intervene. *C. sciendum quib. mod. feud. constit. pot. 1. f. 25. 3tio*. In a new Few, none are admitted Witnesses in the Investiture or Seafine, but such as are *pares Curie, i. e.* who have Fews in the same Province or Territory; But in ancient Fews, even Strangers can be Witnesses. *c. sine Clericus. 2. f. 32.*

A new Few by paction, may be turned into an old, so as it shall have all the same effects. *C. duo fratres de duob. frat. a Capit. invest. 2. f. 18. c. si duo de fratrib. de nov. benef. invest. 2. f. 12. c. si quis de feud. non hab. propr. feud. nat. 2. f. 48.* The reason is, that every one is Master and Governour of his own Estate, *l. 21. c. Mand.* and may burthen it with what he hath a mind *l. 48. ff. de Pact. l. 10. c. eodem*. But Bishops, Abbots and Prelats, cannot turn a new Few to an old. *C. 2. extr. de feud.* Since they can do nothing in detriment to the Church. *l. jubemus. 14. c. de 55. Eccles.*

An old Few cannot be turn'd, even with the Consent of the Superior, into a new, without Consent of the Vassals Kindred by the Fathers Side; *c. quidam vassalus de vaf. decrep. stat. 2. f. 14.* The reason is, that the Kinsmen have acquired a Right, by the first Seafine. *G. de Marchia de feud. March. 1. f. 14.* which cannot be taken

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from them against their wills. *c. si contigerit an Agnat. vel fil. poss. Retin. 2. f. 45. c. alienatio de al. pater. feud. 2. f. 29.*

If there be a Controversy about a Few, whether it should be presumed a new one or an old one; I decide, that the presumption is for its being an old Few; *c. si de feudo pr. si de feud. defunct. content. sit. c. 2. f. 26.* The reason is that things should be taken in the most gracious sense. *l. 56. ff. de Reg. Jur.* but it is most gracious to presume it an Ancient; because the Agnats or Kinsmen by the Fathers side shou'd else be excluded from the Succession.

Fews are also divided into Ecclesiastick, and not Ecclesiastick, which are constitute in things profane.

Ecclesiastick Fews are, Those that are constitute in Lands, belonging to the Church. *Nov. 7. c. 3. Nov. 55. c. 2. & Nov. 120.* They differ in this, that in secular Fews, none can be a Witness in the Seafine, but one who hath Lands in the same Territory, *c. si ve Clericus qui test. sunt necess. 2. f. 33.*

In Ecclesiastick Fews, any body may be admitted a Witness *c. si inter. inf. pr. si de invest. int. dom. & vas. & c. 1. f. 26.*

Some Fews are constitute in Lands, not in the Superiors own Territory, or subject to his Jurisdiction, and those are called *extra curtem*; others are within his Territory, or subject to his Court, which are called, *in curte*: This is another Division of proper Fews: *c. quia supra §. 1. quibus mod. feud. amitt. 1. f. 5. c. quidam pr. de capit. qui cur. vend. 2. f. 51. si contentio in f. pr. apud quem vel quos controvers. feud. def. 1. f. 18. l. fin. ff. de Jurisdic.*

There

Of Improper FEWS.

II

There is another Division of proper Fewes; for in some, the Vassal swears Fidelity to the Superior, against all and without Reserve; That Few is called *Ligium fudior. C. imperialis. §. satis. 2. f. 52.* There are two things required to make a Few, a *Ligium Feudum. 1mo.* That the Vassal swear, without Reserve, all Fidelity.

2do. That it be expressly mentioned in the Instrument of Sealine, that it is, a *Legium Feudum.*

In others, the Vassal swears Fidelity, but with Reserve of some other Superior. *c. est & alia de nov. form. fidel. 2. f. 7. c. Dominio. Hic finitur Lex &c. 2. f. 28. c. imperialem in f. 2. f. 55.*

C H A P. I V.

Of Improper Fewes.

Improper Fewes are, "Those which by vertue of some Disposition in the Fewdal Law, or by Pactions of Parties, recede from the common nature of Fewes.

From which Definition Two things may be collected. *1mo.* That Fewes that are Improper by some Disposition of the Fewdal Law, (such as, when the Superior obliges his Vassal to keep and defend his Territories; and gives him a Few on that Condition, which is called *Feudum Guardia*, or that which they call *Castaldia*, which is, when the Vassal is to govern in absence of the Superior, and like a Procurator manage his Affairs,) or by paction: in other Articles where there is no Change, they retain the nature of Proper Fewes. *C.*

si quis ea de feud. non hab. propriam feud. nat. 2. f. 48.

2do. When it is dubious, the Law presumes Fews rather to be Proper than Improper; except the mind of the Parties contracting, seem contrary. *L. non aliter 69 ff. de legat. 3.* Or that otherwise the Disposition should be of no effect. *l. fundus 24. ff. de Instruct. vel instrum. leg.*

There are different kinds of Improper Fews, First That which is called *Fæmineum*, that is, a Few which a Woman, acquired first, or which a Woman was first Invested or Infeft in. *c. sequitur §. fin. de success. feud. 1. f. 8. c. si fæm. de feud. 2. f. 30.*

Some calls *Feudum Fæmineum*, That which is given by a Woman: But that is contrary to the Feudal Law. *c. si Fæmina 2. f. 30.*

Others call that *Fæmineum*, when by paction it is so constitute, that a Woman may succeed: Which indeed hath the same Effects almost, but however is not called so. *C. per successionem de success. fratr. 2. f. 11 & c. c. successionis de nat. success. feud. 2. f. 50.*

When it is dubious, the Law does not presume a Few to be *Fæmineum* *c. quia §. 3. de his qui feud. dar. 1. f. 1. c. obertus in fin. in quib. caus. feud. amitt. 2. f. 23.*

There are some Fews, which are Mixt, where half by a Man, half by a Woman was acquired: in which Few if the Vassal leave behind him a Daughter only, the half only will belong to the Daughter, the other half to the Superior. *C. si cui militi casus quib. fæm. in feud. succed. 2. f. 104.*

There are some Fews called, *Feuda Hereditaria*, or, Those which are granted to the Vassal and his Heirs whatsoever. *c. si quis de feud. non hab. propr. nat. feud. 2. f. 48.*

A Fourth sort of Fews is, *Feudum Francum*, which is given to the Vassal, without Obligation to personal services. *C. significavit 41. extr. de test. & attest.* In this, the Vassal is obliged to swear an Oath of Fidelity, except it be particularly said or expressed that he need not do it. *C. prima a §. 1. quæ fuit prima caus. benef. amitt. 2. f. 24 & c. c. hæc sunt pr. de capp. corrad. 2. f. 40.*

He is obliged too, to Honour and Reverence his Superior *l. fin. c. de oper. libert.*

There is another Few called, *Feudum Conditionatum*; when in the Seafine or Investiture, certain Services (as to assist the Superior in time of War) are expressed, to be performed by the Vassal. *c. Obertus in f. in quib. caus. feud. amitt. 2. f. 23.*

The sixth sort of Improper is, *Feudum de Camera vel Cavena*, which is when a Count or Prince grants a Bank-House, or Custom-House, or Wine Cave, or Vine-Yard in Few, for a certain quantity of Money, Wine, or Oyl to be pay'd yearly *c. obertus §. sciendum de feud. cogn. 2. f. 1. c. Investitura §. quid sit Invest. 2. f. 2.*

In these Fews nothing is due, except there be Money in the Bank-House or Custom-House, or Wine or Oyl out of the Vine-Yard, in the Wine Cave. *c. notandum pr. de not. feud. 2. f. 58.*

These Fews are extinguished by the Death of the Receiver. *c. quia pr. quis dicatur Dux, March. 2. f. 10.*

The seventh sort of Fews is, *Guardia Feudum*, when a Few is given to any body for defending the Superiors Territories. *c. item illud feud. Guard. 1. f. 2.*

Another kind is called, *Castaldia Feudum*, which is

is granted to the Vassal, for managing the Superiors private Affairs. *c. item illud* 1. f. 2. *c. si contentio de content. int. Domin.* 1. f. 10.

A ninth kind of Few is called, *Advocatia Feudum*, which is granted for Pleading and Counsel in Law Suits. *c. Fredericus* §. 5. *de pac. tenend.* 2. f. 27.

These Fews, *Guardia*, *Castaldia*, and *Advocatia*, expire as to their Grant, in an year: *c. item illud* 1. f. 2 The reason is, the Cause for the most part then ceases; so must then the Effects l. 38. *C. de Episc. & Cleric.*

They may be revoked too, after a year, without refunding the Money given by the Vassal: For he was to blame himself, if he payed too much for a Few, that was revokable in an year. l. 1 ff. *de Condict. indeb.*

They expire too, by the Death of the Vassal, and go not to his Heirs; l. 9. ff. *de Curat. furios.* & *al.* however, tho the Vassal dye at the beginning of the year, these Fews being like a Reward or Salary, the whole years fruits goes to the Vassals Heirs. l. 15. §. 1. *c. de Advoc. divers. Judic.*

Another kind of Fews, is *Feudum soldate*, from *Solidus* a Ducate; it is when some Pension in Money or Fruits is given out of such or such Lands to a Man for Aliment, which must be Gratuitous and Annual, *c. quia Principe quis dicatur Dux March.* & *c.* 2. f. 10.

It differs from *Feudum Camera* & *Cavena*, in two things. 1mo. In it no Services are required, as in the other. 2do. This Few expires, als well by the Death of the Granter as Receiver. *c. quia*
Pr

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Pr. quis dicatur Dux March. &c. 2. f. 10. which takes not place in that of *Camera & Cavena.*

The last kind of Improper Fews is, Habitation or, *Feudum Habitationis*, which is, when any House is given in Few to be inhabited gratuitously. *c. ut inter de Conditione feud. non implet. 2. f. 75.*

The Grant ends with the Vassals Life, nor goes it to his Heirs; *c. feuda de feudis habitas. 2. f. 105. l. 10. pr. ff. de us. & habit.*

CHAP. V.

Of Persons who can grant Fews.

EVery person that hath the free Administration of his own Affairs, may grant Fews; whether Clergy-men or Laicks. *c. Investitura per quos fiat invest. 2. f. 3. c. quia pr. de his qui feud. dar. 1. f. 1.*

Tutors and Curators can renew an ancient Few; but not grant a new one; for that is a sort of alienation of Immoveables, which is not allowed to them, without the Authority of a Judge *Tor. tit. de rebus eorum qui sub. Tur. vel Cur.* and even that will not do, except for paying of Debt; for gratuitous givings, even with the consent of a Judge, is not sufficient. *l. fin. C. si major factus alienat. sine Decr.* Procurators can grant new Fews, if they have a special Mandat for that effect. *l. 63. ff. de Procurat.* or, if they have the free Administration of a Mans whole Stock. *§. 43. Inst. de rer. divis. l. 58. & 59. ff. de Procurat.*

It must however be for an Equivalent Value;

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Because Procurators are to manage, not gift away Mens Goods, *l. 3. ff. de Acceptilatione*: It is valid notwithstanding, if the Master after ratifie it. *l. fin. c. ad sct. Maced.*

Minors and Pupils cannot grant new Fews, with their Curators and Tutors Consent: *Tot. tit. de reb. eor. qui sub Tut. vel Cur. Tot. t. C. de prad. & al. reb. min. sine decret.* And because Minors and Pupils, in Law are compared together, *l. 3. c. de integr. rest. min.* And because in renewing Fews, they bind themselves in some manner, and govern their own Affairs, which is not permitted. *l. 3. C. de Integr. rest. pr. Inst. de Auth. Tut. l. 9. ff. eodem* and least, they should prejudice themselves, and make their condition worse, which is not allowed. *pr. inst. de Auth. Tut.* which they may do in renewing Fews, fallen into their hands by some fault of the Vassal; they cannot give new Seafine, without consent, of their Curators.

If a Minor grant a new Few, and swear never to revoke it, it is valid. *Auth. sacramenta puerum. C. si advers. vendit. c. hac edictali. §. fin. de pace tenend. 2. F. 53.*

Or, If a Minor grant Fews with consent of the Judge, having obtained from the Prince a Dispensation of his Age, the Grant will be good, *l. 3. C. de his qui ven. etat.*

Mad and furious people can give no sort of Grants. *l. 5, l. 124. §. 1. ff. de R. J.*

Prodigals cannot; Because their way of managing and that of Madmen is alike. *l. 10. ff. de Curat. furios. l. 12. ff. in fin. de Tut. & Curat. dat.*

Deaf people and Dumb, if they want Judgement and Understanding, are in the same case.

And

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And so are Slaves, and Children in power of their parents. §. 3. *Inst. per quas person. cuique acquir. l. 22. ff. de R. J. §. 1. Inst. d. t. l. 8. C. de bon. qua lib.*

But for what they succeed to, by their Mother, or any other Friend, which is called *Peculium Adventitium*, or what they gain by the Sword or Gown, which is called *Castreufe* or *quasi Castreufe peculium*, they can give in Few; *l. 6. §. fin. ff. de Injust. Rupt. & Irrit. test.* tho they cou'd not leave it in their Testaments; because the power of Testing by the Law of the Twelve Tables, was only competent to Masters of Families.

The Clergy are, the Pope, Patriarch, Arch-Bishop; Bishop, Abby, Abbess, Prelats and others, who have the Administration of the Churches Affairs, *Quia* i. f. 1. c. *Clerico de cler. qui Invest. fac. 2. f. 35.*

The Pope hath an equal power with all Church-Men, and can few out any Lands belonging to the Church, tho' without St. Peters Patrimony, c. 2. v. *præter hac de sent. & re Jud. in 6. c. patet 10. c. nemo 13. c. cuncta. 17. caus. 9. q. 3. c. licet 2. de præbend. in 6. & clem. 1. in f. ut lite pend. nihil innovetur.*

The rest of the Clergy, cannot give in Few any Lands, but belonging to their own Church; and even not so, except the Lands were fewed out before; for that wou'd be to give away what is appropriated to pious Uses, or to God. c. *quia pr. 1. f. 1. c. item si Episc. vel Abbat. vel Abbatiss. 1. f. 6. §. 8. Inst. de. rer. divis. c. semel Deo 51. de R. J.*

Prelates can, without consent of the Chapter, renew a Grant of a Few: for it is presumed, that

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the Chapter having at first consented, are still of the same mind. *c. 2. extra de feud.*

A Few of Church-Lands, when it returns to the Church, may be given again by a Prelate in Few to any of his Relations, *c. 2. extra de Feud. ibi libere concedas. c. dilecto. 25. extra de prebend.*

Prelates, who, before Pope Urban the second, (who is named. *c. item si Episc. vel Abbat. 1. F. 6.*) were not in use to grant Fews, cannot acquire that Right by Prescription; because all Alienation of Church-Goods are prohibite without previous Cognition, or Judgement on the matter, and the Pope or Chapters Consent thereto. *c. nullis. & tot tit. extra de Reb. Eccles. alienand.* beside to acquire a Right by Prescription; *Bona Fides*, or an opinion that one hath good Right, is always required by the Canon Law: now a Prelate can never have a firm perswasion, that he can alienat the Goods of the Church, contrary to its Laws, which he shou'd, and is presumed to know. *c. ult. extra de prescript. c. possessor. 2. de R. J. in 6.*

When Prelates give in Few, what had been so formerly; it must be with the same Restrictions, Conditions, and Limitations, and the Church must be in no worse Condition, or the Grant is null. *c. 2. extra de feud. ibi si videris expedire.*

The Laicks are, the Emperor, King, Duke, Marquis, Count or Earl, Baron, Noble Man, Commoner, and Women.

The Emperor at pleasure may give Fews; *c. quia pr. de his qui feud. dar. 1. f. 1. & c. de Marchia. de feud. March. 1. f. 14.* even of Lands, that are not his own Patrimony, but given to support the Dignity of the Empire. *e. natura. de Nat. Feud. 1. f.*

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7. *c. de Marchia*. 1. *F. 14. c. qui a pr. quis dicatur Dux &c.* 2. *f. 10. l. 3. §. 4. in fin. ff. Quod vi aut clam.* 1. 3. *C. de quadr. præscript.* 1. 27. *ff. de admin. & pericul. tut.* 1. 7. *§. 3. ff. pro emptore.*

He cannot indeed alienate these Goods: but giving in Few is not altogether an Alienation, since the Property remains with the Superior: *C. Obertr. in f. in quib. caus. feud. amitt.* 2. *F. 23.* so a Vassal who hath no power to alienate, yet can give subaltern Infeftments. *c. Investitura. §. 1. per quas fiat Invest.* 2. *F. 3. c. est autem pr. qualiter olim poter. feud. alien.* 2. *F. 9.*

Kings, Dukes, Marquisses, Counts, have the same power; if they be independent as the Emperor.

Barons and Noblemen may grant Fews, yet not so amply as the former, *c. quia pr.* 1. *F. 1.*

All sorts of people may give Fewdal Grants, Men and Women, *c. Investitura. §. 1. v. fæminam quoque.* 2. *f. 3. c. qui a pr. 1. f. 1. c. item si Episc. vel Abbat.* 1. *F. 6.*

And altho' Superiors, are as the Protectors in War of their Vassals, and ought to defend them from Injuries, which Women are not capable of doing; yet they may substitute others in their place.

C H A P. V I.

Of Those who are in Capacity of taking Fews.

ALL persons, who are not prohibite, may take Fews. *Investitura. §. 1. v. personam per quas fiat Invest. 2. F. 3. 6. si de Feudo. §. si minori, si de feud. def. content. 2. F. 26.*

Men or Women. *c. sequitur. §. filia 2. de success. feud. 1. F. 8. c. si fœmina de feud. fœmin. 2. F. 30.* nor is it material to exclude them, that warlike services are required, for all Fews are not military; beside if they were, they might act by Deputes. *c. imperialem. §. 1. de prohib. feud. al. per Frid. 2. F. 55.* And lastly, The Superior himself is to blame; if knowingly he grant Fews to Women, and therefore cannot quarrel it. *l. 23. ff. de Minorib.*

Those that are not of Age, or of Age, may take Fews. *c. si de feudo. §. si Minori. 2. F. 26.* Pupils by their Tutors. *l. 18. §. 2. C. de Fur. delib.* and Minors with consent of their Curators; not without it, because they cannot be obliged without the foresaid Consent: *pr. Inst. de Auth. tutor. l. 3. c. de in integr. restit.* but in taking of a Few, the Vassal obliges himself to honour and Reverence his Superior. *C. Obertus in f. in quibus caus. feud. amitt. 2. F. 23.*

If

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If a Minor want a Curator, he may take a Grant and swear Fidelity; but if afterward, it be found to his prejudice, he may be restored. l. 3.

C. de integr. restit. minor.

Laicks or Clergy-Men may take Fews, Nobles or Plebeians Sons too, in the power of their Father. l. 39. ff. de O. & A.

But a Father cannot give a Few to his Son; for Gifts between Father and Son are forbid. l. 1. §. 1. ff. de Donat. If a Son gets a Few, the Fruits of it do not belong to the Father during his Life; because in Fews the Property is made so, as to continue with the Superior, and only the profit to the Vassal: *C. Obertus. 2. F. 23.* in which case, even by the Civil Law, the *Usufruct* wou'd not belong to the Father; *Auth. excipitur. c. de bon. qua liber.* and truly if it were otherways, the Son wou'd be nothing the better.

If a Few be given to a Slave by his own Master, the Grant is good, and he gets his Liberty beside; §. *sed & servus. 1. Inst. Qui test. tut. dar. poss. pr. Inst. de haredib. Instit.* if by another, not knowing he was a Slave, it is not valid. *c. Investitura §. 1. vers. personam. 2. F. 3.*

If a Stranger leave a Slave a Few, in view that his Master may get it, it will be a good Grant, and the Master will get it: §. 3. *Inst. per quas person. cuique acquir.* but if he designed, the Master should have no part of it, it will belong to the Slave; and beside, the Slave will be a free Man, since its presumed his Master is willing, when knowingly he allows his Slaves to be seas'd and infest in a Few.

A Duke may hold Lands of a Plebeian. *c. ex facto.*

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facto. imp. feud. amitt. 2. F. 100. For tho' an inferior Person, hath no power over one that is higher, and cannot use Jurisdiction over him; *l. 4. ff. de Recept. Arbitr.* yet if the other subject himself, it is good, *l. 14. de Jurisdic. l. 13. §. pen. ff. ad stt. Trebell.*

Rusticks or Boors, since they can give Lands in Few, they may also take: But if one of them get a noble Few, he is not nobilitat, except in the Investiture it be declared so expressely, or tacitely investing one as a Noble Man. *c. quia pr. 2. F. 10.*

Clergy-Men may take Fews; and if it be any prejudice to the Superior, he hath himself to blame. *c. hac sunt. §. item si Clericus de Capit. Conrad. 2. F. 40. c. ex transmissa. 6. extr. de for. compet.* yet because a prejudice is done to a Superior against his will, and which he cou'd have no Prospect of in a Vassal, who was Laick at the getting of the Few, turning afterwards a Church-Man; the Few returns to the Superior by such a Change. *c. si de feudo §. qui Clericus. 2. F. 26. c. si femina. in f. de feud. fæmin. 2. F. 30.*

Children, furious People, Prodigals, Deaf, Dumb and Blind, may be admitted to Fews by the help of a Curator. *L. 5. ff. de R. J.* and they may act by a Substitute as to Services, and even take the Oath of Fidelity so; *C. Investitura. §. 1. vers. sed utrum ipse 2. F. 3.* or, the Superior may dispence with that Oath. *C. Investitura. in fine.*

These incapable of taking Fews, are,
Hereticks, with whom all Commerce is forbidden. *l. 4. §. 1. C. de heret. & Manich. Apostates, l. 4. C. de Apostat.*

These

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Those that are Excommunicated with the greater Excommunication. *c. 16. 32. & 33. caus. .11.*

q. 3.

Those that are banished for ever, into an Island, and who can have no Heir; even as to Goods acquired after Sentence. *L. 2. C. de bon. Proscriptorum.*

The Banniti, or Men proscribed by the Emperor.

Manifest Usurers. *c. 1. de usur. in 6.*

Men condemned for Treason, or any publick Crime. *L. ult. C. ad l. Jul. Majest. l. 9. C. de bonis proscript.*

Infamous Men cannot take Fews, *L. 2. §. & 3. ff. de his qui not. infam. & l. 4. §. 7. ff. de rei Milit. nor be Judges. L. 12. §. 2. ff. de Judiciis.*

The Vassals are Judges in Differences, betwixt the Superior and other Vassals. *c. si inter de Controvers. feud. ap. par. term. 2. F. 16. c. ex eo. de Controv. inter Episc. &c. c. 2. F. 20.*

C H A P. V I I.

The way of Constituting, or Acquiring Fews.

FEWS are constituted by Testament; when a Superior leaves a Few to a Vassal in his Testament, which may be done by the Roman Law, which is expressly set as a Rule or Law, where it is not abrogated by the Feudal-

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dal-Law: *c. Obertus. in f. pr. 2. F. 1.* tho' the Vassal cannot dispose of the Few by Testament. *c. sequitur. in f. pr. de success. feud. 1. F. 8.*

Fews are constitute too, by Emption and Vendition, when the Vassal sells the Few, with Consent of the Superior, *c. si quis de benef. fratr. 1. f. 20,* or, the Superior sells it. *C. si quis sine quemadmodum feud. ad Filiam. 1. F. 24.*

They are constitute by Excambion or Change, when one Few is given for another. *c. Negotium si de feud. Vassal. ab aliq. Interpel. 2. F. 25.*

As also by Stipulation, when two agree; and utter that Agreement in a set Form of Words; that one shall give the Few, the other take it, and swear Fidelity. *c. imperialem. de prohib. feud. alien. per Frid. 2. F. 55.*

• Lastly, Fews are constitute by Paction; when without Stipulation two agree, the one to give, the other to take a Few, and swear Fidelity. *C. obertus in f. in quib. caus. feud. amitt. 2. F. 23.*

The Fewdal Contract is, *bonæ fidei*, that is, where not words, but their sense is looked to, or *stricti juris*, in which there is a set Form, just as the Contract by which it is constitute, is, *s. 28. Inst. de Action.*

The Method of acquiring Fews are three, Investiture or Seafine, Prescription, and Succession: for the sentence of a Judge cannot be called a way of acquiring, since it only declares; that such a peice of Land was acquired before. *l. 8. s. 4. ff. si servit. Vindict.*

CHAP. VIII.

Of Investiture and Prescription.

Investiture, is a solemn Giving or Tradition of the Few by the Superior, either Really or Symbolically, *c. Investitura. Quid sit invest. 2. F. 2.*

It is an Act and not a simple Convention; for the Vassal by the Investiture acquires the Few, *C. Obertus. in f. 2. F. 1 C. per successionem de success. fratr. 2. F. 11. c. sciendum. de Consuet. rect. feud. 2. f. 33*, and can claim it from any Possessor whatsoever, *c. cum de re s. rei autem de invest. de re al. fact. 2. F. 8*, where as if it were a Convention, he cou'd not thereby acquire it, since only Personal, not Real Rights, are so transferred, *l. 20. C. de Pact. l. 3. pr. ff. de O. & A.*

This may be given or taken by the Parties Procurators, *c. Investitura per quos fiat Invest. 2. F. 3.*

As to the Form, *imo.* There must be either Real, or Symbolical Tradition, *c. Investitura. 2. F. 2. §. 41. Just. de rerum divis. §. 45. Just. eodem l. 74. ff. de Contrah. emt. 2do.* There must be Witnesses upon it, or the Investiture is null; *c. si-ve Clericus. Qui test. sunt necess. 2. f. 32. c. Investitura. 2. f. 2.* Or at least some Testificate, such as an written Instrument, *c. si vero Qui success. feud. dar. 1. f. 3 c. si autem si de Invest. Feud. controvers. 1. f. 4.*

The Witnesses must be Freemen; not Slaves; *c. Notandum est. §. quod autem pars de Not. feud. 2. f. 58.*

They must be Men and not Women, *c. sive Clericus vers. de veteri. 2. f. 32.* the reason is, That formerly Investiture uses to be given in publick meetings of Men; and it is not agreeable to the Modesty of the fair Sex, to be present at them meetings, *l. 1. §. 5. ff. de pastul.*

They must be Vassals of the same Superior: they are called *Pares Curia*; for if they were Strangers, they might be brib'd to Infidelity to the Superior, whose proper Vassals wou'd have more respect to, because of their Oath of Fidelity to him, *c. Investitura pr. 2. f. 2 c. sive Clericus pr. 2. f. 32, c. Notandum §. item sciendum. in f. 2. F. 58.* This is also so essential, that tho' the Superior shou'd confess the Investiture, it will not be good, *c. sive Clericus. 2. f. 32.* because a Solemnity introduced by publick Law cannot be altered by any Superior, or private Mans Will, *l. jus publicum. 38. ff. de pact.*

In renewing the Investiture of an old Fee, any Witnesses are sufficient, *c. sive Clericus §. de veteri 2. F. 32.*

If the Superior hath no Vassals, other witnesses may be taken; *c. Investitura. §. si vero. 2. F. 2. c. sciendum vers. quod autem. 2. F. 33.* but if his Vassals be only absent for the time, they must be cited, *c. sciendum vers. nec dicatur. 2. F. 33.* and if they come not, they may be forced; *l. 4. l. 5. l. 8. & l. 19. ff. de Testib.* for the time in which they are to come, or how long they are to be waited for, being not expressly determined in Law; it is

is left to the discretion of the Judge, *l. 1. ff. de jur. delib.*

Tho' a Slave be held and repute a Vassal, the Investiture will be null, if there be not a sufficient number of Witnesses beside him: for the omitting of any, even the least, Solemnity required by Law, vitiates all: *l. Julianus, 9. §. sed si quis 3. ff. ad exhibendum.* beside it is in the same case with a Slave, who was held and repute free; and after the discovery of his being a Slave, his Investiture given him, while a Slave, was found null, *c. Investitura. §. 1. vers. personam per quos fiat Invest. 2. F. 3.* for altho' Testaments be valid, if a Slave held and repute free, be a Witness; *l. 1. C. de Testamentis.* yet this is owing to the Emperors Goodness, who favours latter Wills, *§. sed cum 7. Just. de Test.* which shou'd not be drawn into consequence, *l. 14. ff. de LL. l. 3. de ff. off. Prator,* and altho' a Magistrates Actings were sustained, tho' he was a Slave that time, but held and repute a Citizen; it is an extraordinary case, and only allowed for the publick Good, *l. 3. ff. de off. Prator.* If the Vassals be incapacitated, such as Pupils, Madmen, &c. others even Strangers may be taken for to be out of Capacity, is equal to not being at all, *l. 6. ff. Qui satisf. Cog.*

When the particular Custom of any place admits Strangers to be Witnesses in the Investiture, it cannot be quarrelled. *c. Obertus. in f. 2. F. 1.*

Clergy-Men, if they grant Fewes of Church Lands, need not have their own Vassals Witnesses in the Investiture, *c. si inter. in fin. pr. si de Invest. inter Dom. 1. F. 26.* but if they grant Fewes,

of their own proper Lands, their Vassals must be Witnesses in the Seafine; for in these they are considered as Laicks, *c. siue Clericus* 2. F. 32. *c. Clerico de Cler. qui Invest. fac.* 2. F. 35.

Two Witnesses are sufficient, *c. si inter. § si quis.* 1. F. 26. *c. Investitura. pr.* 2. F. 2. for when indefinitely the Plural Number is named it is satisfied two, *l. 12. ff. de Testib. c. Notandum §. quod autem in f. de not. feud.* 2. F. 58.

The other sort of witnessing or testifying, is by an Instrument, made by the Superior, upon the Investiture or Seafine, *c. si vero qui success. feud. dar.* 1. F. 3. *c. si autem pr. de Invest. feud. Controvers.* 1. F. 4. it requires two Witnesses, Vassals to the same Superior, *c. Investitura. vers. fin.* 2. f. 2. *c. siue Clericus. Vers. sed si alii in f.* 2. F. 32.

Investiture, is either Proper *i. e.* True, or Abusive, *c. Investitura.* 2. F. 2.

Proper, when in presence of so many of his Vassals; the Superior puts his new Vassal in Possession of the Few, solemnly leading him to it, *c. Investitura* 2. F. 2. or if the new Vassal be absent, the Superiors Command before two of his other Vassals to enter in Possession, is equal to an Investiture, *c. sciendum pr. de Consuet. rect. feud.* 2. F. 33. but his Command to enter in Possession not before two Vassals, gives no Right to the Few, *c. sciendum quib. mod. feud. constitui potest.* 1. F. 25. Words in this sort of Investiture are not required.

Abusive, is what is done in words not solemn, *l. 10. C. de Contrahen. & Committ. stipul.* together with some corporeal Act; the giving, to wit, a Spear or Sword in the Investiture of Kings, or of a Standard in that of Dukes, or sometimes a

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Sword, if they be made Independent, or by a Ring or Chain to people of a lower Rank, *c. Investitura pr. 2. F. 2.* Ecclesiastick, is by the Delivery of a Batton, Cloak, or Ring.

Investiture is either of a new Few, or old, *c. Investitura pr. per quos fiat Invest. 2. F. 3. c. siue Clericus. 2. F. 32. c. beneficium de Invest. vet. & nov. benef. 2. F. 91.*

Beside, Investiture is either simultaneous, where two or more are Invested in the same Few, or not Simultaneous, where one only is invested: If the simultaneous Investiture be simple, then when one of the Vassals dies, his part of the Few returns to the Superior; but if it contain a Paction, that they mutually shall succeed one another when one dies without Sons, his Share goes to the other, *c. si duo de Fratrib. de nov. benef. Invest. 2. F. 12. c. duo fratres de duob. fratrib. a capitano. 2. F. 18.*

Before Investiture there must be Citation: the Superior, having promis'd to Invest a Man in a Fee, must cite him in order to do it; and if after three Citations he come not, he loses any Right he can pretend to, *c. Dominus de Mil. Vas. qui contumax. 2. F. 22. c. prima autem. §. 1. quæ fuit prim. caus. ben. amitt. 2. F. 24.* If the Superior delay, the other may offer to do what he was obliged by Paction; and if he refuse, the Vassal may do himself Justice, and freely plunder and harass the Superior as an Enemy, and a Man void of Faith and Honesty, *c. Dominus in f. 2. F. 22.*

After Investiture there must be an Oath of Fidelity sworn, *c. utrum autem quid præced. deb. 2. F. 4.*

The Investiture is either Simple or Pure, which takes place immediately, or it is Conditional; then it must not be of Force till the Condition exist, or, it is ordered to be of Force but after such a Term or Day, which then is to be waited for, *c. Investitura. §. 2. quid sit Invest. 2. F. 2. c. est autem qualiter ol. pot. feud. al. 2. F. 9. c. Clerico de cler. qui Invest. fac. 2. F. 35.*

The effect of Investiture, is that the Right of the Few is transferred to the Vassal, and by one abusive Investiture, the Superior is obliged to give free and empty possession precisely.

By proper Investiture, all Rights and Possession too are transferred to the Vassal, *§. 41. Inst. de rerum divis.*

By Abusive Investiture, all Right is transferred, *C. Obertus. in f. de feud. Cognit. 2. F. 1. c. sciendum de Consuet. rect. feud. 2. F. 33.* yet not possession, which the Superior is precisely obliged to give; nor is he free by giving the Value, *c. si autem si de Invest. feud. controuv. 1. F. 4. c. si de feudo. §. si facta 2. F. 26. l. 74. ff. de Contrah. empt. l. 1. §. 21. l. 18. §. 2. ff. de acquir. poss.* but if the Symbol be given in sight of the Few, then that abusive Investiture transfers both the Property and Possession, *§. 45. Inst. de rerum divis. l. 74. ff. de Contrah. emt.*

When the Superior promises Investiture, and does not perform, he may be obliged precisely to do it, and transfer Possession, *c. Investitura. §. 1. per quos fiat Invest. 2. F. 3.* where it is said, a Superior is not obliged to Invest a Man and give him Possession who breaks Faith; it plainly follows then, that if he do not so, but keep Faith, the Superior

perior is obliged to give Right and Possession:

If it be out of the Superiors power to do it, he is free from precise delivery, *l. 6. C. de Hered. vel act. vend. l. 68. §. f. ff. de Contrah. emt.*

This precise giving Possession, takes only place in pure Investitures; for in Conditional, until the Condition exist, the Superior is not obliged to give Possession: *§. 4. Inst. de V. O. l. 213. ff. de V. S.* yet in Conditional, the hope of succeeding is transferred to the Vassals Heirs, and the Superiors Heirs are also obliged to ratify or perform what was promised, when the Condition exists; *c. si vero qui success. feud. dar. 1. F. 3. c. Si quis qui success. ten. 1. F. 9. §. 4. Inst. de V. O. l. 57. ff. de V. O.* But this does not hold in Clergy-Mens Successors: for if a Clergy-Man Invest a Man conditionally, and before the Condition exist dye, his Successor is not obliged to perform, tho' the Condition should afterward exist; *c. si vero 1. F. 3. C. si quis 1. F. 9.* yet if the Investiture hath been given by consent of the Chapter, the Prelate succeeding being advanced to Honours by the Chapter, is obliged to Ratifie their Doings, *l. 149. ff. de V. S.*

The other way of acquiring Fews, is by Prescription, which is the possessing of Lands or Tenements and doing Services for them, as Fewdal for Thirty Years, *c. si feudo. §. si quis per 30. 2. F. 26. c. in Beneficiis an prescript. feud. acquir. 2. F. 87.*

The First Thing required, that the Few be possessed as such; for if he hath Possession or another account, and wou'd make use of that Possession for Prescription of the Lands as Few, it will not do,

l. 19. §. 1. ff. de acquir. poss. c. si de feudo. §. si quis 2. F. 26. c. quidam de usu Mediolan. 1. F. 28.

The Vassal must think his Right good, or have *bona fides*, c. in beneficiis 2. F. 87. l. un. c. de usuc. Transf. c. pen. & ult. extr. de prescript. the Possession must be uninterrupted, c. si de feudo §. si quis 2. F. 26.

The Second Requisite, is Thirty Years Possession; c. de feudo, §. si quis 2. F. 26, tho' Ten or Twenty is sufficient by the Roman Law, except in their longest Prescription, l. fin. c. de prescript. long. temp. the reason of the difference is, First, it was the Custom of the Longabards, as Authors say, then because of the durity of it; since thereby Superior and Vassal are mutually bound to another, to certain Duties and Performances.

A Years Possession after Investiture, is a Presumption that the Vassal was seised, if the Superior deny it, c. si inter §. 1. in f. si de Invest. in dom. & 1. F. 26. yet contrary Probation is allowed the Superior. c. si inter 1. F. 26. c. sciendum pr. Versic. inde etiam de cons. Rect. feud. 2. f. 33.

As to the Prescription of Thirty Years, the same and no more is required in Lands belonging to the Church, §. si quis c. si de feudo 2. f. 26. Because giving Lands in Few, the Property continuing still in the Church, is not altogether an Alienation, otherways Forty Years Prescription wou'd be necessary, N. 111 & N. 131. c. 6.

The Thing required, is that Fewdal Services must be performed, and it is enough that they be once, c. si de feudo §. si quis 2. f. 26. If one be performed for Thirty Years, and the Vassal that time possess the Few, not as Fewdal but Allodial,

Of Succession in Fews in general.

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dal, or holding of none; the Property and Superiority will belong to the Vassal, *l. 1. & 2. C. de long. temp. prescript. qua pro libert. oppon. l. fin. C. de his qui a non Domino Manumiss.* If again the Superior get Possession of the Few, and continue in it for Thirty Years, the Vassal will thereby lose his Right; because a Fewdal Right is a Servitude or Burthen on Property; and therefore all Property being at the beginning unburthened, is easily presumed to return to its own Nature as it was at first, *§. cum in suo 30. in f. Inst. de rer. divis.* Beside *Usufruct*, is los'd or Extinct by the Civil Law by Disuse for a certain time, *l. 25. ff. Quib. mod. usufr. amitt. l. 16. C. de usufr.*

If a Stranger get a Few, and possess it for Thirty years, if he got it not at first with consent of the nearest Agnats of the Vassal, his Possession will give him no Right, since the Law requires that as essential, *c. hac sunt §. prater ea 2. F. 40. c. imperialem pr. vers. nos autem de prohib. feud. al. per Frid. 2. F. 55.*

C H A P. I X.

Of Succession in Fews in general:

THE next way of acquiring Fews, is by Succession, when upon the Death of the Vassal another acquires the Few, *C. Obertus in f. de Cognit. Feud. 2. F. 1. C. per successionem de success. fratr. 2. F. 11. C. sciendum de Consuet. recti feudi. 2. F. 33.*

34 Of Succession in Fews in general.

None can succeed to a Few by vertue of a Testament, *c. sequitur in f. pr de success. Feud. 1. F. 8.* yet if the Vassal actually leave the Few in Legacy, the Heir must give the value of it to him to whom it is left, since he cannot give it self, *l. 14. §. fin. ff. de leg. 3. §. 4. Inst. de Legat.*

There are indeed some Cases, in which by Testament Fews may be disposed upon, For First, If the Few be Hereditary, or granted to the Vassal and his Heirs whatsoever, he may freely dispose of it.

Or if expressly, with that paction, it be granted to be in any manner disposed, as the Vassal shall think fit, *c. si quis de feud. non hab. propr. Nat. Feud. 2. F. 48.*

Or Thirdly, If the Testament be made with the Consent of the Superior and Kinsmen, *c. quia §. quib. mod. Feud. amitt. 1. F. 5. c. alienatio de alien. patern. feud. 2. F. 39.* their being present at the making of the Testament and not contradicting; since so doing they might hinder any thing to be done, is taken for a tacite consent, *l. 26. §. 1. in f. ff. de Pignor.*

Fourthly, If the Superior and Agnats ratify the Testament, *l. fin. C. ad S. C. Macedon.*

Regal Fews, such as Dukedomes &c. may now pass with their Titles by Succession, *c. si Clientulus inf. de alien. Feud. 1. F. 13.* which was not in use at the beginning, *c. de March. de Feud. March. 1. F. 14.*

Fews by Succession go to Heirs Male, who are in Capacity to do Fewdal Services: Women cannot regularly succeed to Fews, *c. quia §. 3. de his qui feud. dar. 1. F. 1. c. sequitur §. filia vero de success. feud. 1. F. 8. c. si quis quemadmodum feud.*

Of Succession in Fews in general. 35

feud. ad fil. pert n. 1. *l.* 24. the reason is, that Fews were given at first for Services in War, and in publick meeting, in which it were not consonant with the modesty of the Sex to be present, *l.* 1. *§. 5. ff. de postulando.* beside, the Imbecillity both of their Bodies and Minds makes them unfit for Counsel; and tho' some may be found other-ways, yet these are rare, and Laws are made, not about what rarely happens, but ordinarily, *l.* 3. *sequ. ff. de L L.*

Nor can the Male Children of Women once ex-cluded, succeed, *c. quia §. 3. de his qui feud. dar.*

F. 1. c. per successionem de success. fratrum. 2.

11. for the Successor by Law can never be in a better Condition, than him or her to whom he suc-ceeds, *l.* 175. *§. 1. ff. de R. J.* besides, Successi- does not go forward than back, *§. 7. Inst. de agn. Agnat. success.*

If it be contraverted, whether the Lands be few- or allodial, a Daughter succeeding may re-ain Possession till the question be determined, *c. de feudo §. inter filiam si de feud. defunct. content.* 2. *F. 26.* heid, she may keep the Few till she be founded in all that her Predecessors have be-owed on Meliorations, *c. Domino. §. si Vassalus. finitur Lex. 2. F. 28.*

Women may succeed in Fews granted at first Women, *c. successionis pr. de Nat. success. Feud.* *F. 50. c. per successionem de success. fratrum.* 2. *F.*

Women succeed, if such a Paction be adjected the Investiture, *c. quia §. 3. 1. F. 1. c. sequi- §. fin. de success. feud. 1. F. 8. c. de Marchia de feud. March. 1. F. 14.* if the paction be,

that such a particular one should succeed, and she die without Heirs, the other Sisters do not succeed, *l. 27. §. 4. in f. ff. de Pact.* if any one of such a number be named, it is in the Superiors power to choose which he will, for his Vassal, *c. quia §. & quia 1. in f. 1. F. 1.* but if mention only be of Daughters, Grand-Children are not thereby understood, *§. ult. Inst. Qui test. Tutor*; sometimes indeed by Sons, are meant Grand-Children too, *l. 84. ff. de V. S.* but that is not proper and ordinary, *l. 6. ff. de test. Tutel.* but done in a favourable Case, *l. 201. ff. de V. S.* and in dubious Cases we should not alter the Propriety of Speech, and ordinary Meaning of Words, *l. 69. ff. de leg. 3.*

Women succeed not, as long as there is any Male descendent of the first Acquirer alive, *c. item si §. 1. Episc. vel Abbat. 1. F. 6. c. sequitur §. fin. de success. feud. 1. F. 8. c. qui sibi vers. non enim patet de eo qui sibi & hered. 2. F. 17.* If it be so pactioned, that Men and Women, or Men with Women shall succeed, the Men will exclude the Women, *l. 53. §. 1. l. 142. ff. de V. S. l. 7. ff. de usufr. accresc. l. 40. ff. de usu. & usufruct. & c. legat.* but if a Woman be once admitted to the Succession, tho' a Male afterward be born, she will not thereby be excluded, *F. 51. §. 3. 2. F. 17.* for Property once acquired still remains, *l. 16. in f. C. de Probat.* nor will she be excluded if the provision be so conceived, Men together with Women &c.

Furious People, and such as are not fit for Fewdal Services, cannot succeed to a Few, *c. Mutus an Mut. vel. al. imperf. feud. retineat 2. F. 36. l. 5. & l. 40. ff. de R. J. l. 68. ff. de R. J. c. item si §. fin. 1. F. 6. & Mutus 2. F. 36*; but in Frank

Frank Fews, such people may succeed, *c. Mutus* 2. F. 39. l. 32. ff. de Pact. l. 6. §. 2. ff. de Jur. Patronat.

Clergy-Men cannot succeed to Fews, *c. si fœmina* in f. de feud. fœm. 2. F. 30. c. Mutus in f. 2, F. 36. c. si de feudo §. qui Clericus si de feud. def. Controvers. 2. F. 26. because they cannot perform Military Services, being Christs Souldiers only, *c. Miles* in f. de Vas. Mil. 2. F. 21. c. & jure clericat. feud. amitt. 2. F. 109. this holds altho' after to obtain the Few, they shou'd quite being Clergy-Men, *c. si fœmina* in f. 2. f. 30. since a Right already competent to others by their being Clergy-Men cannot be taken away contrary to Law, l. 11. ff. de R. J.

Spurious Children, Incestuous Ones, and Sons of Concubines cannot succeed to a Few, *c. si de feudo* §. Naturales 2. F. 26.

CHAP. X.

Of the Succession of Descendents and Collaterals.

THE Succession goes first to Descendents, then to Collaterals, *c. successionis de Nat. success. feud.* 2. F. 50.

Ascendents or Parents, do not regularly succeed to Fews, since Fews are given to a Man and his Posterity, *c. success. pr.* 2. F. 50.

If upon the account of good Deeds done by a Father, a Son be invested in a Few, it is presumed in

in Law to be given to the longest Liver of the two, *l. 6. ff. de Collat.* if there be no Descendents, in some singular Cases where Ascendents are admitted, they succeed equally with the Defuncts Brethren, *Auth. defuncto C. ad sc. Tertull.*

Wives are never admitted to succeed, *c. si fœmina an Marit. succed. uxor 1. F. 15. c. Titius de Invest. quam Tit. accept. 2. F. 13.*

As for Descendents, as long as there is any, they succeed Natural and Lawful Children equally, but Grand-Children many or few succeed to the Portion due to their respective Fathers, *c. per successionem de success. Frat. 2. F. 11. §. cum filius 6. & §. fin. Inst. de Heredit. qua ab Intest. c. quia §. hoc quoque 4. de his qui Feud. dar. 1. F. 1.*

Adopted Children are not admitted to Succession; nor Bastards, *c. si de feudo §. Adoptivus & §. Naturales 2. F. 26.* for Adoption brings not the Right of Blood with it, *l. 23. ff. de Adopt.*

Children whether in the Fathers Family or settled else where, *N. 118. c. 1.* (whether of one or more Marriages, providing they have the same Father, *N. 22. c. ult. c. per successionem 2. F. 11,* whether they be disinherited or not, for no Father by his Testament can exclude his Sons from the Few) equally succeed, *c. sequitur in f. pr. de success. Feud. 1. F. 8.* Yet sometimes Lawful Children are excluded from the Few. For if the Vassal commit Felony, his Children who are supposed to be of his Disposition, are excluded, *c. si de feudo §. si vassalus 2. F. 26. c. Vassali si Vassal. feud. priv. 2. F. 31. l. 5. §. 1. C. ad L. Jul. Majestatis.*

If a Son commit such a Crime as wou'd exclude him if he were in Possession, if he be not reconciled to the Superior, cannot succeed, *c. imperialem §. fin. de prohib. feud. al. per Frid. 2. F. 55.*

Lawful Children, if there be Children of a former Marriage to whom the Father was obliged to dispoſe the Few, cannot ſucceed, *c. quidam de filiis Nat. ex Matr. ad Morganat. contr. 2. F. 29. c. si de feudo §. filii 2. F. 26.*

Lawful Children, are excluded in Regal Fewſ, where only the Eldeſt ſucceeds, *c. Imperialem §. firmiter 1. verſ. prater ea 2. F. 55.* for in others, the Father cannot hinder his Sons to ſucceed equally, *c. ſequitur pr. de ſucceſſ. feud. 1. F. 8.*

Collaterals come next, and they ſucceed in ancient Fewſ; they muſt be Agnats and not Cognats, *c. per ſucceſſionem de ſucceſſ. frat. 2. F. 11. c. ſucceſſionis de Nat. ſucceſſ. 2. F. 50.*

I ſay they muſt not be new Fewſ, for in theſe Brothers cannot ſucceed, *c. per ſucceſſionem verſ. quod ita intelligendum 2. F. 11. c. quidam de vaſ. decrep. etat. 2. F. 14. c. Vaffalus de Invest. in Marit. fact. 2. F. 15. c. si de feudo pr. si de feud. defunct. cont. 2. F. 26.*

Yet if it be ſo paſſion'd, that Collaterals ſhall ſucceed, tho' in a new Few it will be valid, *c. quia §. 2. c. ſequitur §. fin. c. si quis de benefic. frat. 1. F. 28.*

Or, if of Brothers dwelling together, one with the others Knowledge, ſhall with their common Stock in his own and Brothers Name, acquire a Few, *c. si quis 1. F. 20.* or, if one Brother with his own Money, but in his own and another Brothers Name acquire a Few, *c. si quis.*

Or, if two Brothers in the Service of the same Superior, and defending him against his Enemies at the same time, shall joyntly acquire a Few, *c. si quis in fin.*

The order in collateral Succession, is this,

Brothers and their Children succeed first, *c. per successionem. vers. his vero 2. F. 11.* those of the same Father, tho' not of the same Mother, succeed equally with those who are Brothers, both by the Fathers Side and Mothers Side, *c. per successionem 2. F. 11.* for they are Agnats as well as Brother Germans, *§. vulgo quasitos 4. vers. eadem ratione Inst. de success. cognat.* by the Civil Law, Brother Germans, or Brothers both by Fathers Side and Mothers Side are preferred, *Auth. post fratres c. de legit. Hæred. N. 118. c. 3.*

After Brothers and their Children, the nearest Agnats succeed, and exclude those that are more remote, *c. per successionem vers. his vero 2. F. 11.* As to the reckoning of proximity, it is from the Vassal that died last, and not nearness to him that first acquired the Few, *c. per successionem.*

Computation is made according to the Degrees in the Roman Law, for the Fewdal says, that the same order is to be observed as in the Law, *c. si quis an ille qui interf. fratrem Dom. 2. F. 37.* but by the word Law is understood the Roman Law, *c. Obertus de feud. Cognit. 2. F. 1. §. 2. Inst. de I. N. G. & C. c. quia §. 4. de his qui feud. dar. 1. F. 1.* where the seventh Generation is put for the seventh Degree: now by the Roman Law Degrees are numbered by Generations, *§. hætenus 7. Inst. de Grad. Cognat.*

Of Descendents &c.

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In ancient Fews in the Collateral Line, are also Uncles and Grand-Uncles, *c. si quis §. fin. Constitutiones. feudal. Dn. Lothar. 1. F. 19.*

If there be an Uncle and the Children of a Brother formerly dead, tho' both be in the third Degree, §. 3. *Inst. de Grad. Cognat.* they will exclude the Uncle, *c. successionis vers. paternum de Nat. success. feud. 2. F. 50.*

If there be a Grand-Uncle of the Vassal, and Grand-Children of his Brother, these Children will not exclude the Grand-Uncle, because they succeed equally by the Roman Law, *Auth. post. fratres. c. de legit. Hæred.* and also because after Brothers and their Sons (by whom are also meant Grand-Children, §. ult. *Inst. qui test. tutor.*) Agnats alike in Degree equally succeed, *c. per successionem de success. fratr. 2. F. 11.*

If Brothers be alone, they succeed equally, *c. per successionem. vers. his vero N. 118. c. 3.* the Children of dead Brothers, if there be any, succeed with them in the same portion their Father shou'd have had, *c. per successionem. N. 118. c. 3.*

If there be no Uncles, but only Brothers Sons, they all equally succeed, §. 4. *Inst. de Legit. Agnat. success. l. 2. §. 2. ff. de suis & Legit. l. fin. §. 3. C. de Legit. Hæred.*

After Brothers and their Children, according to nearness of Kin, all Agnats if it were to a Million of Generations, succeed, *c. successionis in f. de Nat. success. 2. Feud. 50. N. 118. c. 3. c. Vassali si vass feud. privetur 2. F. 31. §. 3. Inst. de leg. Agnat. success. §. fin. de servil. cogn. l. 2. §. 1. ff. de suis & Legit.*

C H A P. X I.

Of Renewing Investiture.

TO Succession follows, of course, the renewing of Investiture, which is always to be sought when either the Person of the Granter or Receiver of the Fee, is chang'd, *c. siue Clericus vers. de veteri qui testes sunt necessar. 2. F. 32.* It is nothing else than the renewing or confirming the Investiture of a Fee formerly granted, *c. Investitura pr. per quos fiat Invest. 2. F. 3.*

This must be sought by the Vassal, who is to make voluntar offer of Fidelity, and not wait till he be cited by his Superior; which is only customary in new Grants, *c. hæc sunt de Capp. Corrad. 2. F. 40.*

New Investiture may be often sought, if either the Vassal or Superior die: the Reasons are *1mo.* 'Tis a Token of the Vassals Devotion for his Superior, *c. prima autem pr. que fuit prim. caus. benef. amitt. 2. F. 24.* *2do.* The Oath of Fidelity must be taken, otherways the Vassal in breaking will not be guilty of Perjury; for Oaths of Fidelity do not descend to Heirs. *3tio.* The last Reason is, least by length of time the Granters Rights, not being so well known, become dark and dubious, *l. 19. C. de fid. Instrum.*

The Vassal, or his Procurator may ask renewing Investiture, *c. Investitura §. 1. per quos fiat Invest. 2. F. 3.*

If there be several Heirs of the Defunct Vassal, and the Few in common without Division, all of them must ask Investiture, or they must unanimously pitch upon one among them, as their Procurator, to do it, *c. Investitura* §. 1. 2. *F.* 3. but if the Few come to any one of them, by Division, he is only obliged to ask new Investiture, *c. si de feudo* §. *omnes filii si de feud. defunct.* 2 *F.* 26.

The person from whom new Investiture must be asked is the Granter, not his Superior, tho' he have one, or the Granter's Successor, *c. imperialem* §. 2. *vers. illud quoque de prohib. feud. al. per Frid.* 2. *F.* 55. *c. sancimus pr. quo temp. Mil. Invest. pr.* 1. *F.* 22.

If there be several Heirs of the same Superior, Fidelity is only to be sworn to one of them, *c. imperialem* §. 1. *vers. praterea* 2. *F.* 55. and the Vassal is to require all of them to choose one out among them, to whom he may swear; and upon their Refusal, he may make the Choice himself.

The manner of asking new Investiture, is that it must be asked humbly, *c. Obertus Versic. quomodo enim Vassalus in quib. caus. feud. amitt.* 2. *F.* 23. with either an express Promise, or a tacite Consent to be faithful, *c. prima autem pr.* 2. *F.* 24. and tacite is presumed, if the Vassal do not expressly refuse, *c. sancimus quo temp. Mil.* 1. *F.* 22. *c. imperial. §. fin.* 2. *F.* 52. *c. imperialem in f. pr.* 2. *F.* 55.

It must be asked solemnly before Witnesses, and to it any body may be Witness, *c. siue Clericus vers. de veteri qui testes sunt necess.* 2. *F.* 52.

An Oath of Fidelity too, must be taken, *c. Investitura in f. 2. F. 3. c. hac sunt pr. d. Capp. Corrad. 2. F. 40.*

It must be asked at a convenient time, not in the Night, Dinner time, or when the Superior is at his Bath; in a convenient place, such as the Superiors Dwelling House, or at least not without his Territories, *l. si soliturus 39. ff. de solut. except he be very near where he may be gone to, without much Expence or Trouble, l. 13. Meria in f. ff. ann. Legat. l. 4. S. si tam vicinum 9. ff. de damno in f.*

The time in which it shou'd be asked, is a year and day from the time the Vassal knew his Superiors Death, or from the time the Vassals Heirs come to know the Vassals Death, *c. prima autem pr. 2. F. 24. c. imperialis S. fin. 2. F. 52. c. imperialem in f. pr. 2. F. 55. c. hac sunt 2. F. 40.* when Ignorance then, is the occasion of not asking new Investiture, the Vassal loses no Right, *c. si de pseudo S. Vassalus S. si Vassalus & S. Vassalus. feudum 2. F. 26.* except his Ignorance be from supine Negligence, *l. 6. ff. de Juris & fact. Ignor. which is declared to be equal almost to Fraud, l. 32. ff. de posit. l. 1. S. 1. ff. si Mens. fals. mod. dix.*

The effects of new Investiture, are that the old Right is just preserved as it was, *c. Investitura pr. 2. F. 3.* Nor can the Tenor of the old Investiture be altered in the new, except the nearest Males of Kin, or Agnats, who have Interest be cited, *l. de unoquoque 47. ff. de re Jud. l. namque 39. ff. de Adopt. c. quia supra S. 1. quib. mod. feud. amitt. l. 1. F. 5.*

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Another effect, is that when it is sought, if the Superior deny it, he loses all Right to the Few, *c. si de feud. §. Domino committente* 2. F. 26. *c. ex facto qualiter Dominus proprietat. feud. priv.* 2. F. 47. *c. in epistola in f. de form. fidelit.* 2. F. 6.

If the Vassal neglect to ask renewing Investiture within the time appointed, he loses the Few, *c. prima autem pr.* 2. F. 24. *c. hac sunt pr.* 2. F. 40. *c. imperialis §. fin.* 2. F. 52. *c. imperialem in f. pr.* 2. F. 55.

If the Vassal was ignorant, whether the Lands were fewdal, *l. 42. ff. de R. J.* or sick, or hindered by bad weather, or Enemies, or be an Infant, these Excuses will be admitted, *l. 2. §. 3. C. 4. ff. si quis caut. in jud. c. si de feudo §. si minori & §. si quis decesserit* 2. F. 26.

If Ignorance be alledged, the Superior must prove Knowledge, *l. 2. l. 21. ff. de probat.* the reason is, because every body is presumed in Law ignorant of Deeds not his own, *l. 42. ff. de R. J.* Lastly, any lawful Excuse will be admitted, *c. sancimus* 1. F. 22. *c. imperialis §. fin.* 2. F. 52.

If a Vassal die within the year, his Successor hath another year to ask Investiture in, *c. sancimus.* 1. F. 22. *l. 1. §. 10. ff. de success. Edict. l. fin. C. qui admitt. ad Bon. poss. §. ult. Inst. de bon. poss.*

C H A P. X I. I.

Of the Subject of Fews.

THE Subject of Fews, are Things Immoveable, or those, at least, that are reckoned so, *c. Obertus §. sciendum de feudi Cognitione* 2. F. 1. *c. Obertus in f. in quibus caus. feud. amitt.* 2. F. 23.

Moveables cannot be given in Few, because by their Nature, Fews are perpetual, and go to Descendents and Agnats, *c. Obertus* 2. F. 23. but Moveables are not perpetual, for their Substance by little and little grows worse, *l. si rem* 47. ff. *de acquir. poss.* beside, the nature of Fews is such, that the Property remains with the Granter, and the Advantage or Usufruct with the Receiver, *c. Obertus* 2. F. 23. but in Moveables which are consumed by use, it is impossible but the Property must go to the Receiver, §. 2. *Inst. de Usufr.* It is true, that if Caution be taken to restore the Substance of the Moveables, after that they are used, it will be good by the Roman Law, §. 2. *Inst. de Usufr. Tit. ff. de Usufr. ear. rer.* but that is against the very nature of Fews, *c. Obertus in f.* 2. F. 23. and altho' Caution by Law, is made to succeed in place of Property, & remain with the Granter, §. 2. *Inst. de Usufr.* yet, that being but sometimes only for the Com-

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mon Good, c. 2. *Inst. de Usufr.* it is not to be made a Rule of, since it is commonly contrary to Law, l. 14. ff. de L. L.

This about Moveables, not being to be given in Few, is a Rule so fixt and firm, that the Receiver of such things in Few is not obliged by any Oath of Fidelity he takes to the Granter upon the Grant, l. 5. C. de L. L. First, because such an Oath is against Law, l. 5. C. de L. L.

Then, because the design of the Parties being to Constitute a Few, and an Oath upon that Account being interposed, there being an Impossibility that way to Constitute a Few; it cannot bind any other way, or be transformed into another Obligation, contrary to the Design and Mind of the Parties Contractors, l. 1. ff. de Jure Codicill.

The Money got for a Few, is moveable, c. *Obertus in f. 2. F. 23.* not Fewdal, for it does not succeed in place of the Few, c. *si de feudo §. vassalus. 2. F. 26.* altho' it be agreed and sworn to by Agnats and all Parties concerned, that the Money shall be Fewdal, l. 5. C. de L. L. this is contrary to the Civil Law, by which the price succeeds in place of the thing, l. 22. ff. de Hared. petit. l. 14. ff. de V. S. l. 10. §. 2. ff. *si quis Cautio. in Jud. Sift. l. 28. §. 1. ff. de jure jur.* Yet for all this, Moveables as they are Accessions to Immoveables, as Ploughs to Grounds, or Beds to a House, may be given in Few, l. 9. C. unde vi l. 2. C. de Bonis vacant.

Some Immoveables cannot be given in Few, as first, Holy Things, or those things which have a particular Sanction to warrant and protect them from Injuries in Law, called *Sancta*.

Secondly,

Secondly, Things sacred, or *Sacra*, which are things solemnly Consecrated to God.

Thirdly, Things Religious, or to be short, Mens proper Tombs or Sepulchres, in-Law called *Religiosa* cannot be fewed out, *l. 62. §. 1. ff. de Contrahen. empt. §. fin. Inst. eodem*, except they be annexed to Things prophane, *l. 22. cum duab. sequ. ff. de Contrah. empt.* or it be for redemption of Prisoners, *§. 8. Inst. de rer. divis.* or if there be Famine, *l. 21. C. de S. S. Eccles.* or if the Church have too many of them things, *Authent. preterea S. C. de S. S. Eccles.*

Fourthly, By the Constitution of Pope Urban the II, all grounds given for the Maintenance of Clergy, or the places they taught in, both call'd *Sedes*, or *Teinds* or *Decima*, or the first Fruits ordinarily given to holy Uses, called *Primitia*, were forbid to be given in Few by the Lateran Council, *c. item c. Episc. vel Abbat. vel Abbatiss. 1. F. 6. c. prohibemus 19. extra de Decim. c. cum Apostolica 7. extra de his que fiunt a Pralat.*

Fifthly, Theatres and Publick Places, *l. 6. pr. ff. de contrah. empt. & §. 2. Inst. de inutil. stipul.*

Sixthly, Litigious Things, of which the Property is in Debate before a Judge, and undetermined, *l. 2. & l. fin. & Auth. Litigiosa C. de Litigios.*

Seventhly, A Wifes Land Estate, given in Dowry called *Fundus Dotalis*, cannot be given in Few, *l. un. §. 15. C. de Rei ux. act. & pr. Inst. quib. alien. lic.*

Eighthly, A Minors Estate without the Decreet of a Judge after mature Consideration, *l. 1. ff. de Reb. eorum qui sub Tutel.*

Ninthly,

Ninthly, A Sons Estate which hath come to him by his Mothers Succession, or that of any other Friend, called, *Bona Adventitia*, of which the Father hath the Revenue or Usufruct, without his Consent cannot be fewed, *l. fin. §. 5. vers. filiis autem fam. C. de bon. quæ liber.*

Tenthly, Things prohibite to be alienated by Testament or Paction, *l. fin. C. de reb. alien. non al. l. 114. §. 14. ff. de l. cum pater 37. §. liberti 27. ff. de Legat. 2.*

Some add other peoples Goods, and Things common; as also peoples own proper Goods, but contrary to Law; for other peoples Goods may be sold, *l. 28. ff. de Contrah. emt.* and so can be granted in Few, *c. cum de re pr. de Invest. de re al. fact. 2. F. 8.* but if the thing be eyicted by the Proprietar, the Seller by the Civil Law was to give the Equivalent, or worth, and Damages to the Buyer, *l. 1. & tot. tit. ff. de Evict.* and by the Fewdal, the Granter in that Case must give as good a Few to the Vassal, *c. cum de re. 2. F. 8.* and the Vassal is not obliged to take the value in Money, *c. si de feudo §. si facta 2. F. 26.*

Things common may be given in Few, to be possessed in common, *c. Notandum §. item sciendum de Not. Feud. 2. F. 58. l. portionem 12. C. de donat. l. 5. §. 1. ff. de Legat. 1. l. 4. C. de commun. rerum alienat.* but if the different Portioners be already contending before a Judge for a Division: without the Consent of all, there can be no Alienation, *l. 1. C. communi dividund.*

As for peoples own proper Goods, they may be fewed, with that Condition to be fewdally, if they

they desist to be the Proprietars, and come to be the Superiors, *l. 61. ff. de contrah. emt.*

But if a Man add not that condition about his own Grounds, or if he will take a grant of a thing which he knew to be anothers; the Superior will not be obliged to make the Grant good, *c. cum de re 2. F. 8. l. 27. C. de Evict. l. 1. §. 1. in f. ff. de Act. emt. l. 26. ff. de Rei vindic.* except Investiture be given upon the Grant, and then the Vassals Knowledge does not hurt him, *c. cum de re in f. pr. 2. F. 8. l. 1. §. 2. ff. de Edil. edict.*

Things Immoveable, are *imo.* Gardens, Fields, *l. 7. §. 1. ff. de Usufr. l. 5. §. 2. & 3. l. 8. & 9. ff. quib. mod. Usufr. amitt.*

2do. Gold, Silver, Iron, Lead, and Copper-Mines, Quarries of Stone, Chalk, Sand, Lime-Stone, Sulphur, &c. *l. 9. §. 2. l. 13. §. 5. ff. de Usufr.*

3tio. Fruits and Corns not cut down, which are reckoned a part of the Ground, *l. 44. ff. de Rei Vind. l. 76. ff. eodem l. 13. §. 10. ff. de Act. emt. l. ult. §. 6. ff. qua in fraud. cred. c. Obertus §. sciendum 2. F. 1.*

4to. Mills fixt, whether Water or Wind-Mills, *l. 18. ff. de Act. emt.*

As to all these things, it is a Rule that they being granted, all what belongs to them or Pertinents, tho' not one word be spoken of them, are comprehended in the Grant, *l. 40. §. 1. l. 47. cum duab. seqq. l. 78. §. de Contrah. emt. l. 38. in f. ff. de Act. emt.* so that Fruits or Corns, Ploughs, Horses, Cows, Sheep, &c. and all that is necessary to manure the Ground, are comprehended, *l. 17. §. 7. ff. de Act. emt.* Rights too, *l. 67. ff. de Contrah. emt.* As also Servitudes Real, *l. 23. §.*

pen & ult. ff. de Serv. Rust. prad. l. 12. ff. communia prad. l. 47. ff. de Contrah. emt. l. 3. C. de Servit. & aq.

The power of Hunting, l. 9, §. 5. ff. de Usufructu: Jurisdiction in a Principality, l. 1. §. 4. ff. de off. Praef. Urb.

The power of cutting of Trees tho' not abusing in the Few of a Wood, l. 2. ff. de Jurisdic. C. cum de re §. e contrario de Invest. de re al. fact. 2. F. 8. and so in other Fewes.

If Trees of a Wood, or Fruits be ready for cutting, they are reckoned as already cut; and tho' the Vassal die, belong to his Heirs, l. 15. ff. de Act. emt.

5to. Incorporeal Things, as Rights and Actions, are reckoned Immoveable, c. Obertus §. sciendum 2. F. 1.

CHAP. XIII.

Of Regal Rights.

Regalia, are "Rights competent to Kings and Independent Princes, only as a Token of their Authority; As for Example, Power of raising Money, &c. c. si inter Dominum vers. si vero Regem si de Invest. inter Dom. 1. F. 26. c. ad hoc de allod. 2. F. 54.

It hath moe Significations too in the Fewdal Law; for sometimes greater Fewes, as Dukedomes, Principalities and Counties are called Regalia; sometimes the power of conferring them are called

led so; sometimes the Royal Ornaments, or Honours, as Scepters, Swords and Crowns: the design of them is to denote Supremacy and Independance, *Const. Frider. de pace Constant. §. Volumus ut Regalia*; as also, that they may be useful for Defence of the Government; for the Emperor is obliged to maintain Souldiers on the Frontiers, *l. ult. C. de off. Militar. Jud.* and to make War, of which Money is the very Soul, *Proam. inst. pr.*

Regalia are divided into Greater and Lesser.

Greater, are those that belong to the Kings Grandeur and Authority, without any pecuniary Advantage; They are,

1mo. The making general Laws, *l. 1. ff. de Const. P. P. §. 6. Inst. de jur. natur. Gent. & C. l. fin. C. de L. L.* which he uses not to do, without the Consent and Advice of his Great Men, *l. 1. ff. de L. L. l. 8. C. eod.*

2do. To create Magistrates to execute the Laws, *c. Regalia 2. F. 56. l. 8. ff. de Just. & Jur. l. 2. §. 13. ff. de O. J. N. 161. pr.*

3tio. To confer Regal Dignities, *c. de Marchia de feud. March. 1. F. 14. c. qui a Pr. quis dicatur Dux 2. F. 10.*

4to. Nobilitating, *l. 5. C. de divers. rescript. & pragmat. Sanct. l. fin. §. 2. C. ubi Senatores.*

5to. Legitimizing Natural Children, or Bastards, *N. 74. c. 2. N. 89. c. 9.*

6to. Restoring to Honour, Reputation, and Rights of Birth, *l. 4. in f. ff. de Pœn. l. 1. §. 10. de postul. ff. l. 1. C. de sent. pass.*

7mo. The giving people who are not of Age, Power to manage their own Affairs, or dispensing with Age as they call it, *l. 1. & tot. c. de his qui ven. impetr.*

Of Regal Rights.

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8vo. Absolving people from Oaths, in order that they may pursue, *l. ult. ff. de . jure patronat. ordinat.*

9mo. Erecting Universities and giving them Priviledges, *l. un. C. de stud. liberal. l. un. C. de professor qui in urb. Constant.*

10mo. Granting Immunities and Priviledges, *l. 1. & tot. t. ff. de censib. & tot. t. C. de Immunit. nemin. concedenda, l. 1. §. ult. l. 3. ff. de Const. P. P.*

11mo. Giving Rights to Cities, *l. un. C. de Metrop.*

12mo. Giving the Priviledge of Fairs and Mercats, *l. 1. ff. de Nund. l. un. C. eod.*

13tio. Giving Liberty to make Arms for the use of the Common-Wealth, *N. 85.*

14to. Declaring War and raising Armies. *l. 3. ff. ad L. Jul. Majestatis, l. 17. C. de re Milit.*

15to. Publick Roads, are among the *Regalia*, *l. 2. §. 22. ff. ne quid in loc. publ.*

16to. Navigable Rivers, *c. Regalia 2. F. 56. l. 2. ff. de fluminib. l. ult. & tot. t. C. aqueductu.*

17mo. Kings Palaces, *tit. C. de Palat. & domib. Dominic.*

18vo. The power of Coining Money, *c. Regalia 2. F. 56.*

19no. The Right of appointing publick Posts, *tit. C. de curs. publ. lib. 12. l. ult. C. de fabricens.*

20mo. The giving Sentence, from which there is no Appeal, or appointing Judges to give such Sentences, *l. 1. ff. a quib. appel. non lic. & §. 4. eodem.*

21mo. Pardoning capital Crimes, *l. 1. §. fin. ff. de quastion. l. 1. ff. de pen.*

Lesse

Lesser *Regalia*, are Those which are for preserving, augmenting, or increasing the Fisk, The Treasury, or Exchequer, *c. Regalia* 2. *F.* 56. *tot. t. ff. & C. de jure Fisci.*

They are 1^{mo}, Harbours and Ports for Ships, to save them from Winds or Pirats; for the use of which a certain quantity of Money is payed to the Fisk, *l. 1. §. 13. ff. de flumin. l. 17. §. 1. ff. de V. S.*

2^{do}. Money payed, or Customs of River Banks, *c. Regalia* 2. *F.* 56.

3^{tio}. A Tribute, or Revenue due from Trade, *c. Regalia* 2. *F.* 56.

4^{to}. Fines and Mulcts, *c. Regalia* 2. *F.* 56. *l. 5. & l. ult. C. de Mod. Mulct.*

Mulcts, are Fines which are imposed for Faults, which in Law have no Name, and are inflicted at the discretion of the Judge, *l. 131. §. 1. & l. 244 ff. de V. S.*

Pœna, Or Fines properly so called, are what are prescrib'd by Law; for Crimes having a particular name in Law, both agree in this, that they belong to the Fisk, *c. Regalia* 2. *F.* 56. *l. 5. & l. ult. §. 4. C. de Mod. Mulct.*

5^{to}. Goods of Men, who have left behind them no Heirs, or Goods having no Man pretending Right to them, *l. 4. C. de bon. vacant.*

6^{to}. Goods taken from Heirs, not revenging their Predecessors Murder, *l. 1. l. 7. & l. 10. C. de his quib. ut indign.* or Heirs calling a Testament false, *l. 2. & l. 8. C. de his quib. ut indign.* or Goods taken from any the Law thinks unworthy to enjoy them, *c. Regalia. l. 1. pr. & l. 13. §. pen. ff. de jur. fisci & tot. t. ff. de his quibus ut indign.* 7^{mo}.

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7^{mo}. The Goods of those that marry incestuously, *c. Regalia* 2. *F. 56. l. 6. & Auth. Incestas. C. de Incest. & inutil. Nupt. & N. 12. C. 1 & 2.* except they have lawful Children, *N. 12. c. 2.*

8^{vo}. Goods of those that are condemned, or proscrib'd, *c. Regalia* 2. *F. 56.* which goes to the Fisk, except men under such Sentences have Parents or Ascendents, or Descendents to the third Degree, *N. 134. c. ult. Auth. Bona C. de Bon. proscript.*

9^{mo}. The prestation of Horse for publick Posts, in High-Ways, which are called *Angaria*, or in private ways called *Parangaria*, *c. Regalia* 2. *F. 56.*

10^{mo}. Extraordinary Taxes for the happy Settlement of the King in the Government, *c. Regalia* 2. *F. 56.*

11^{mo}. Silver Mines, *c. Regalia* 2. *F. 56.* If such Mines be in private Mens Estates, they pay a certain quantity of Silver to the Fisk, *l. 2. & tot. t. C. de Metellar. & Metall.* but belong however to the private Men in whose Grounds they are, *l. 9. §. 2. & 3. ff. de Usufr. l. 7. §. 13. & seq. ff. solut. Marr. l. 3. in f. ff. de reb. cor. qui sub tut. vel cur. &c.*

12^{mo}. Taxes from Salt Pits, payed to the Fisk; tho' the Pits themselves belong to private people, *l. 17. F. de V. S. l. 4. §. 7. F. de Censib.*

13^{tio}. The Estate of those that are guilty of Treason; even tho' they have Children and Parents, *c. Regalia* 2. *F. 56. l. 5. C. ad L. Jul. Majest. N. 134. c. ult.*

14^{to}. Treasures found in Church-Yards, or the Emperors Burial Place, without search the half of which belongs to the Fisk, *c. Regalia* 2. *F. 56. l. 3. §. pen. ff. de jur. fisci.*

The

The *Regalia* come to be treated here, because they can, and are ordinarily given in Few, *c. Regalia* 2. F. 56.

Greater *Regalia*, tho' it be contraverted, may be transferr'd by the Prince.

When Dukedomes and Counties are granted, the *Regalia* are not presumed to be granted, except they be specially nam'd, *c. quod Translatione* 4. *extr. de off. legat.*

If a Dukedome or County be granted with these Words, All Right whatsoever, neither greater nor lesser *Regalia* will be presumed, *c. quod Translatione* 4. *extr. de off. Legat.*

If Dukedomes or Principalities be given with the *Regalia*, without mentioning which, the lesser is presumed only to be granted: but since all words are presum'd to have some signification; if the words, All the *Regalia*, be mentioned, it is presumed greater and lesser are granted.

If some of the *Regalia* be named, and a general Clause with all the other *Regalia*, no more is presumed to be granted than others, like those that are express'd, *c. sedes* 15. *extr. de prescriptis. l. ult. ff. de trit. vin. vel ol. leg.*

C H A P. X I V.

Of the Form, Effect and End of Fews,
as to the Superior.

THAT which forms, or is the Form of a Few, is a Promise or Oath of Fidelity by the Vassal to the Superior *c. qualiter autem qualiter jurare deb. 2. F. 5. c. Epistola de form. fid. 2. F. 6. c. est & alia de nov. form. fidel. 2. F. 7. c. Dominus §. curia de Mil. vass. 2. F. 22.*

Fidelity in the Fewdal Law, is two ways taken, either, 1^{mo}. For the Oath of Fidelity, *c. utrum autem quid preced. deb. 2. F. 4. c. in epistola 2. F. 6. c. est & alia 2. F. 7. c. prima autem §. 1. qua fuit prim. caus. ben. amitt. 2. F. 24.* this can be remitted by paction.

2^{do}. Fidelity is taken for the Faith given by the Vassal with an Oath, or without it, to do all things for the Superiors Advantage and Safety, *c. Investitura in f. pr. per quos fiat Invest. 2. F. 3. c. qualiter autem 2. F. 5. c. in Epistola 2. F. 7. c. est & alia 2. F. 7.*

The Oath should comprehend all that the Vassal shou'd do to the Superior, least it be too general, the Vassal being perhaps ignorant, swear what he does not know, *c. est & alia 2. F. 7.*

An Oath of Fidelity sometimes signifies the Allegiance that Subjects swear to their Sovereign, *c. qualiter autem 2. F. 5.*

The Oath of Fidelity is to be taken by all Vassals, Clergy-Men or Laicks, in all sorts of Fews,

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c. nuper nobis § 1. extr. de testibus c. Investitura § 1. in f. 2. F. 3. c. si quis de feud. non hab. propr. nat. feud. 2. F. 48.

Except 1^{mo}. By paction it be agreed, that Fidelity being performed, there shall be no Oath interposed, *c. Investitura in f. 2. F. 3.* Or,

2^{do}. The Few be granted to the Church, who being the Patrons and Recommenders of Piety, Justice and Honesty are ever presumed to walk accordingly, *c. negotio 2. F. 101. c. si Clientulus de alien Feud. 1. F. 13.*

The end and design of Fews, is the publick Good, the Preservation of Families, both the Superiors and Vassals, and for the private utility of all concerned, *c. Investitura §. 1. vers. nulla autem 2. F. 3. c. qualiter autem 2. F. 5. c. Obertus vers. imprimis in quib. caus. feud. amitt. 2. F. 3.*

The effects of a Few as to the Superior, are that he remains Proprietar, tho' the Advantage of the Fee goes to the Vassal, *c. Obertus in f. 2. F. 23.* but when the Fewdal Right comes to be extinct, the advantage als well as the Property belongs, or returns to the Superior, *c. prima autem vers. denique qua fuit prim. caus. 2. F. 24. §. ult. Inst. de usufr.*

Another effect, is that Reverence must be paid to the Superior; in which is comprehended Honour and Fidelity, *c. Dominus de Adlit. Vassal. 2. F. 22.*

The Vassal must not accuse his Superior. *c. prima autem §. 2. vers. item si delator 2. F. 24. c. sciendum §. similiter 2. de Consuet. recti feud. 2. F. 33.* except it be for Treason against the Government, *N. 115. c. 3. §. 3. juncto vers. item si Delator 2. F. 24.*

Of Fewes as to the Superior.

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It hath the effect too, that the Vassal cannot require an Oath of Calumny of his Superior, *c. sciendum* §. 1. 2. *F.* 33.

The Vassal cannot intent an Action against the Superior, in cases where Infamy must follow on the Sentence, *c. est & alia de Nov. form. fid.* 2. *F.* 7. l. 2. *§. l.* 5. *ff. de Obseq. parent. & patr. prest.* *§. l.* 4. *C. eodem.*

The Vassal must not be a Witness against his Superior, *c. sciendum* §. *similiter* 2. *F.* 33. l. 4. *ff. de Testib.* l. 12. *C. eodem*, either in Civil or Criminal Cases, §. *similiter*.

The Vassal is obliged to assist his Superior, both with advice and aid, and not reveal his secrets, *c. Epistola* 2. *F.* 6.

He is to defend his Superior in a Cause just or unjust, *c. Domino* 2. *F.* 28. or if it be dubious, *c. Domino. Hic finitur Lex* 2. *F.* 28. but if it be very unjust, he is not obliged to assist him in pursuing, but if it be just, or even dubious, he is obliged to assist him in the Pursuit, *c. est & alia vers. etsi scivero* 2. *F.* 7. *c. Domino. Hic finitur Lex* 2. *F.* 28.

This assistance is to be given against all Men, *c. est & alia* 2. *F.* 7. against Father, Son and Brother, *c. Domino in f.* 2. *F.* 28.

Except 1^{mo}. The King, Emperor or Republick, *c. est & alia* 2. *F.* 71. *c. imperialem in f. de prohib. Feud. alien per Frider.* 2. *F.* 55

2^{do}. The Vassals ancientest Superior, *c. Domino* §. *fin.* 2. *F.* 28. l. 11. *pr. ff. qui prior in pign.* l. 11. *ff. de R. J. c. imperialis* §. *satis bene de prohib. feud. al. per Lothar.* 2. *F.* 52.

3^{tia}. The Vassal is not obliged to give Assistance against himself, l. 6. *C. de servitut.* yea he may, if unjustly assaulted by the Superior, defend himself against him, l. 3. *ff. de Just. & jur. l. 2. & 3. C. ad L. Corn. de Sicar.* because there are mutual Obligations to Honesty and Kindness, between Superiors and Vassals, *C. in Epistola 2. F. 6.* Nor,

4^{to}. Against his Native Country, l. 35. *ff. de Religios. & sumt. fun.*

If nothing be agreed upon, at granting of the Fief, and the Fief be Rich, the Vassal is obliged to serve on his own Charges, even out of his own territories; but if poor, upon the Superiors, l. 23. *ff. de R. J. l. 18. ff. de operis libert. c. Ober-tus in f. 2. F. 23. c. ad hoc in f. de Allod. 2. F. 54.*

This assistance is never to be given, but when required by the Master himself, and not by another, and must be personally performed, unless the Superior allow a Substitute, or accept of so much of the Revenue yearly to procure one, *c. sancimus pr. de feud. sine culp. non amitt. 2. F. 21. c. si de feudo s. licet si de feud. Defunct. content. 2. F. 26. c. est & alia vers. & si scrivero 2. F. 7. c. si de feudo s. licet 2. F. 26. c. Domino s. ad hoc & c. si quis s. non cogitur an ille qui intes. frat. Dom. 2. F. 37. C. Epistola 2. F. 6.*

Because the Vassal is obliged to do all things for the Preservation of his Superior, *c. in epistola 2. F. 6.* it follows, that in necessity he must be helped and alimented, even to the half of the Revenue of the Fief, and redeemed from Enemies, and loosed from Prison, if in it for Debt, if the Fief can bear the Expence, *c. si de feudo s. licet 2. F. 26.*

l. 1. C. de oper. libert. c. extra de furt. 3. l. 2. C. de parib. qui filios Distrax. l. 5. §. 18. ff. de agnosc. & alend. liber. c. ad hoc 2. F. 54. c. imperialem §. 1. 2. F. 55.

CHAP. XV.

Of the Effects of Fews as to Vassals.

THE Vassal hath the natural possession of the Few, c. est & alia §. 1. de Nov. form. fidel. 2. F. 7. c. cum de re §. 2. de Invest. de re al. fact. 2. F. 22. c. si de feudo 2. F. 16.

He hath some sort of Property as to some Effects, c. cum de re §. rei autem 2. F. 8.

He hath a power of reaping the Fruits, Civil Industrial and Natural, c. Obertus in f. 2. F. 23. c. Domina §. his consequenter hic finit Lex 2. F. 28. c. si contigerit an Agnat. vel Fil. 2. F. 45. c. imperialem §. firmiter 2. F. 55. yet a Treasure found in the Few, whether by himself or another, will belong in half to the Superior; and the other to the Finder, §. 40. Inst. de rer. Divis. l. 63. §. 3. ff. de acquir. rer. Domin. and it is reasonable, for if the Few were ruin'd, the loss wou'd be the Superiors, c. Obertus in f. 2. F. 33. and therefore such Advantages shou'd belong to the Superior, l. 10. ff. de R. J.

The Vassal hath all, that by alluvion or any other way accretes to the Few, c. si autem controversia §. pen. ff. de Invest. feud. controvers. l. 1. F. 2. except the Superior hath reserved to himself any

part

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part of the Few; for in that case, what accresces will belong to the Superior, *c. si autem §. pen. 1. F. 4.* or if the Lands be bounded; for then there is no place for any accession, *l. 16. ff. de acquir. rer. Domin. l. 1. §. 6. ff. de flumin.* what accresces needs not new Investiture, *l. 11. §. 7. ff. de public. in rem act. l. 16. pr. ff. de pignor. & Hypoth.* nor will the Vassal, for all that accresces, be obliged to greater Services and Duties, *l. ult. C. de alluvionibus,*

The Vassal, if it be not to the prejudice of his Agnats, Kinsmen and Superior, may constitute a Servitude upon the Few, *c. cum de re §. rei autem 2. F. 8.* But he cannot impose an Usufruct or Liferent; for by that he would be disabled from performing due Service; beside it is a sort of Alienation, *l. fin. C. de Reb. alien. non alien.* which cannot be done to the Superiors Disadvantage, *c. imperialis 2. F. 52. c. imperialem 2. F. 55.*

He may Set or Locat the Few, providing it be not fraudulently, *c. est autem §. donare qualiter olim poter. feud. alien. 2. F. 9.*

He may Transact about the Few, if it be Dubious and not certain whether it be fewdal or not, *c. si controversia 2. F. 43. l. 1. ff. de Transact.*

He may submit to Arbiters, whether his Claim to the Fee be good; for that is compar'd in Law to Transaction, *c. Vassalus de Investitura in Marit. fact. 2. F. 15. c. Lex Corradi pr. vers. si autem De leg. Corr. 2. F. 34. c. ex eo An. apud. Judic. 2. F. 46.* this is no alienation, for the Arbiters are as likely to vote for, as against the Vassal, *l. 1. ff. de Except. qui arbitr.*

Of the Effects of Fews as to Vassals. 63

He may renounce the Few, *c. quidam de vas. decrep. atat. 2. F. 14. c. si vassalus in f. de vas. qui contra const. Lothar.* for any body may quite an Advantage, that is introduced in his own favours, *l. 51. C. de Episc. & Cler. l. pen. C. de pact.* even altho' the Vassal swear never to renounce; for that Oath is to be taken, or interpreted according to the nature of the Contract to which it is annexed, *l. 5. C. de L. L.* but here the Vassal may renounce, without the Superiors Consent.

If the Renunciation be in favours of the Superior, after the present Vassals Death the Superior must restore it; if an ancient Fee, to the Agnats; if a new Few to the Descendents, for the Granters Right being extinct, so must the Receivers of consequence be, except the Descendents or Agnats have consented to the Renunciation, *c. alienatio pr. de alien. pater feud. 2. F. 39.*

If Renunciation be made in favours of Descendents and Agnats, since they were to succeed however, the Superior is obliged to Invest them, *c. quidam 2. F. 14.*

If Renunciation be made to an Agnat of a farther Degree, the Nearer if Money was given, may redeem the Few at the same price; but if it was for Nothing, it being all one to him who enjoy it, during the Vassals Life, must wait the Vassals Death who renounced, and then may claim the Few, *c. si de feudo. §. Titius si de feud. defunct. 2. F. 26.*

After Renunciation, tho' the Vassal be not obliged to Services, yet he must not ever be uncivil to his late Superior, *c. si vassalus in f. de vas. qui contra const. Lothar. 2. F. 38.*

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As the Vassal may renounce the Fee, so may the Superior do any Services due by the Vassal, even against the Vassals Will, c. in Epistola de form. fidel. 2. F. 6.

The Vassal may few out to others the Fee, either all or a part, c. Investitura §. 1. vers. per feudum per quos fiat Invest. 2. F. 3. c. est autem pr. qualiter olim poter. 2. F. 9. c. si de feudo §. beneficium 2. F. 26. c. lex Corrad. §. 2. de lege Corrad. 2. F. 34. so may a Sub-Vassal in any Few, c. quia pr. quis dicatur Dux 2. F. 10. c. Lex Corradi §. similiter, 2. F. 34. c. Investitura §. 1. 2. F. 3. even Regal Fews, providing all be granted in Few to a Sub-Vassal, for such Fews admit of no Division, c. Imperialem §. firmiter 2. F. 55.

To Sub-Fewdation it is requir'd, that it be not done fraudulently, against Law or Custom, c. Investitura §. 1. 2. F. 3. c. est autem qualiter pot. olim 2. F. 9. c. si de feudo §. Beneficium 2. F. 26. that it be not to a person of worse Condition, lest thereby Services due, be not so well performed, c. si de feudo §. beneficium 2. F. 26. c. Lex Corrad. §. similiter 2. F. 34. that it be not on worse Terms than he himself hath from his Superior, c. lex Corradi §. similiter vers. profecto 2. F. 34. Therefore, it must not be granted to Churches, Universities or Cities, c. si Clientulus vers. unde potest presumi de feud. 1. F. 19. nor to Heirs Male and Female, if his own Grant be only to Males, c. lex Corradi §. similiter 2. vers. profecto ille prius 2. F. 34. for in that case the Grant is null as to Females, l. 1. §. 5. ff. de 10.0. dict. §. profecto.

The Effects of Sub-Fewdation, is that the Sub-Vassal, hath in some manner the Property, and the

Of the Effects of Fews as to Vassals. 63

the Vassal only power to require Services and Fidelity, *c. cum de re §. rei autem 2. F. 8. c. imperialem §. fin. de prohibet. feud. al. per frid. 2. F. 55.*

He hath also the natural possession, and the first Superior hath the Civil, but the Vassal none at all, *l. un. C. uti possidet. l. 3. §. 5. ff. de acquir. poss.* and the Sub-Vassal, tho' he is only subject to the first Superior by consequence, and is not his Vassal, yet he is obliged to Services to the Superior, and not to molest him, *c. imperialem §. fin. 2. F. 55.*

The Sub-Vassal too after the Vassals Death may retain the Few, if he be content to acknowledge the Vassals Superior, and do Services, *c. est autem pr. 2. F. 9.* yet Agnats who wou'd have succeeded, may claim the Few; for the Vassals Right being extinguished by Death, the Sub-Vassals must fall of course, *l. 31. ff. de pignor.*

The Superior is obliged to defend the Vassals Right, so that if the Few be evicted, he is obliged to give als good a Few, or the value, as the Vassal shall choose, *c. negotium si de feud. vas. ab all. Interpell. 2. F. 25.*

He is obliged too, in a just War to assist his Vassal, or he loses the Property of the Few, *c. si de feudo §. Domino 2. F. 26. c. ex facto qualiter Dominus propriet. feud. privetur 2. F. 47.* and the Superior is not to molest his Vassal, *c. in epistola 2. F. 6.* nor without a just and sufficient Cause deprive him of his Few, *c. Natura de Natur. feud. 1. F. 7. c. prima autem qua fuit prim. caus. benefic. amitt. 2. F. 24. c. sancimus de feud. sine culp. non amitt. 1. F. 21.*

C H A P. X V I.

Of the Causes for which a Few becomes extinct, and particularly of Injury done against the Superiours person.

THE Causes for which a Few becomes extinct, are not all expressed in the Fewdal Law, but some of them left to the Discretion of the Judge, to determine whether they equal, or are more hainous than the Crimes expressed in Law, *c. prima autem §. 2. vers. sed quia Natura quæ fuit prim. caus. benef. amitt. 2. F. 24.*

The Crimes which extinguish the Few, in this Chapter are against the Superiours Person or Estate: as to his Person, if the Vassal attack in any manner of way his Life, *c. in epistola. 2. F. 6. c. est & alia de nov. form. fidel. 2. F. 7. c. prima autem §. 2. vers. porro 2. F. 24.*

Or if he lays down methods and ways to kill him, tho' they take no effect, *c. quidam §. si voluerit de cap. qui cur vend. 2. F. 51. c. si vassalus quot test. sunt necess. 2. F. 57. c. quia supra pr. vers. similiter 1. F. 5. c. si Capetana quib. mod. feud. amitt. 1. F. 17.*

If he lift up his hand to beat his Superior, tho' he do it not, *l. 15. §. 1. ff. de Injur.* for the very offer is a great affront, *§. atrax. 9. Inst. de Injur.* and therefore Repentance operats nothing, *l. 17. §. 1. ff. de Edil. edict. l. 65. ff. de furt. l. pen. ff. vi. bon. rapt.* there are some exceptions from these Rules: for it is not punished with the loss of the Few, if the Vassal kill his Superior when he gets him in bed with his Wife; because they are reciprocally bound to mutual Duties; yet being Homicide it is in some measure punishable, *l. 38. §. 8. ff. ad leg. Jul. de adult.*

The Vassal loses the Few, if he conspire with Enemies against his Lord or Superior, *c. si vassalus 2. Feud. 57.* but the Superior must prove the Vassals Infidelity; for it will not be presumed from his not being at Enmity with his Enemy, since it is a Duty upon every body to live in Friendship with one another, *l. 223. §. 1. ff. de V. S.*

The Fee is extinct, if the Vassal willingly, without being forced by a Judge, witness ought against the Superior, *c. sciendum §. similiter 2. de Consuet. rect. feud. 2. F. 33.* It is also so, if he accuse him before a Judge Criminal, or delate him to the Exchequer, *c. prima autem §. 2. vers. item si delator 2. F. 24. c. sciendum §. similiter 2. F. 33.* yet this does not hold, if he prosecute an Injury done to himself, or his near Relations, *l. 11. ff. de accus. l. 1. §. 43. ff. de vi & vi armat.* nor is the Vassal depriv'd of his Few, if he accuse the Superior of Treason, *N. 115. c. 3. §. 3. l. 7. §. 2. ff. ad L. Jul. Majestatis l. ult. C. de Delator:* nor will the Vassal be punish'd if he withdraw his Accusation from a

Conviction that he was wrong, and not for want of Probation, *l. 14. §. 8. ff. de bonis libert.*

The Vassal is depriv'd of his Few, if he lampoon or give very opprobrious Language to his Superior, *c. prima autem §. 2. vers. porro 2. F. 24.* since it is an Injury to the Superior, the Vassal is deprived of his Few, if he debauch, or even attempt, his Superiors Wife, *c. quia supra vers. item si fidelis &c. quib. mod. feud. amitt. 1. F. 5. c. sanctimus §. fin. de feud. sine culp. non amitt. 1. F. 21. l. 1. ff. de extraord. Criminib.* Brides or Women after they are contracted or have given their Consent to marry, are in the same case with Wives, *l. 13. §. 3. ff. ad L. Jul. de Adult. l. 4. ff. de fund. Dotal. & l. 5. C. de bon. quo liber l. 15. §. 24. ff. de Injur.* if the Vassal debauch his Superiors Widow, he does not lose his Few, except it be within year and day of the Superiors Death; for in that case the Law presumes former Adultery, *N. 39. c. 2.*

The Vassal is deprived of his Few, if he debauch his Superiors Daughter, Sons Wife, or Sister, or Sons Daughter, *c. quia supra vers. item si fidelis 1. F. 5. c. prima autem §. 2. vers. rursus 2. F. 24.* It is not the same, if the Vassal debauch his Superiors Grand-Daughter procreat of the Superiors Daughter: for tho' the Parents affection to all their Children and Grand-Children is presum'd the same, *l. 8. . 3. ff. quod Met. Caus.* yet there is this difference; that a Grand-Child by the Son remains in the Family and power of the Grand-Father; whereas a Grand-Child by a Daughter goes into another Family, *§. fin. Inst. de Patr. potest.* If the Vassal put his hand down his

his Superiors Wives Breasts, or take her by the Mark; tho' he were a Church-Man, *l. 12. §. fin. ff. de accus. l. 19. C. de Episcop. & Cleric.* he loses his Few, *c. quia supra vers. item si fidelis 1. F. §.* yet if he find her in a Stew, he is not punished, *l. 15. §. 15. ff. de Injur.* for the Law makes none punishable as Adulterers, Ensnarers of Maids, or Committers of Rapes, for taking any Freedom whatsoever with Whores, as being persons unworthy of the protection of the Laws, *l. 22. & l. 29. C. ad L. Jul. de Adult.* nor doth he lose his Few; if what he does to persons related to the Superior, be with their own consent, *l. 1. §. 5. ff. de Injur. l. 145 ff. de R. J.*

C H A P. X V I I.

Of Delinquencies against others than the Superior, by which the Few is extinguish'd, and of those which are occasion'd by the Few it self.

THose occasion'd by the Few, are the following Delinquencies. If the Vassal maliciously deny his Few to be fewdal, or any part of it, he loses what he denies, whether whole or part, *c. si de feudo §. Vassalus si de feud. Des. 2. F. 26. c. lex corrad. in f. de leg. Corrad. 2. F. 34. c. si vassalus de Vas. qui contra const. Lothar. 2. F. 38.* or if he deny any Condition or Term

Term of the Few, or the Instrument of Investiture or Seafine, because in effect he denyes the Conditions and Limitations therein contained, he loses the Few, *c. si de feudo §. Vassalus si feudum* 2. F. 26. except he hath answered dubiously about it, *c. lex Corrad. in f. 2. F. 34. c. si de feudo §. vassalus* 2. F. 26. or denyed it ignorantly, for in them cases he is to be excused, *d. §. Vassalus*; again the Vassal loses the Few if he abuse it, or make it worse, *c. cum de de re §. 1. de Invest. de re al. fact.* 2. F. 8. *c. Fridericus §. 5. de pace tenend.* 2. F. 27. but to that are requir'd, that he do it designedly and fraudulently, after being admonished by the Superior, *c. imperialis §. 5. & fin. de prohib. feud. al. per Lothar.* 2. F. 52. *c. sancim. de feud. sine culp. non amitt.* 1. F. 21. *c. sancimus §. fin. quo temp. mil. Invest. pet. deb.* 1. F. 22. *c. prima autem §. 2.* 2. F. 24. that it be very notable and great; as the pulling down of a House that is fewdal, or cutting for Wood Fruit-Trees, *c. Ober-tus in quib. caus. feud. amitt.* 2. F. 23. *c. prima autem §. 2. vers. praterea vers. item si delator & vers. denique* 2. F. 24. *l. 13. §. 4. ff. de Usufr. l. 13. §. 4. & l. 45. §. pen. ff. de Jure fisc.*

The Vassal loses his Few, if he alienate it without consent of the Superior; who if he be present, and do not oppose, is presum'd to consent, *l. 4. §. ult. ff. de fidejuss. & Nominat. & hered. Tutor. c. si Clientulus de alien. feud.* 1. F. 13. *c. praterea quid jur. si post alien. feud. Vas. id Recuper.* 2. F. 44. *c. imperialis* 2. F. 52. *c. imperialem* 2. F. 55. the Reasons are, that the Vassal by alienating seems to despise his Superior, *c. prima autem §. fin.* 2. F. 24. beside he obtrudes another Vassal on him

him against his Will, *c. si duo de fratrib. de Nov. benef. Invest. 2. F. 12.* then it may prejudice the Superior as to his Services, *c. cum de re 2. F. 8.* But tho' in new Fews the Superiors Consent is sufficient, yet in old ones, before alienation can be valid, the consent of the nearest of Kin who are next Heirs is requir'd, *c. alienatio de alien. pater feud. 2. F. 39.* If the Vassal in alienating add this Clause, *this shall be valid;* if the Superior consent, it will save his Few, *l. 7. ff. de contr. emt.* or if he say, "I alienat my Few, but with Reservation of the Superiors Rights; he will not forfeit the Few, *l. 4. §. 1. ff. quib. mod. pign. vel Hypoth. solv. l. 57. ff. de Manumiss. test.* or if he be ignorant that his Lands were feodal, *c. si de feudo §. vassalus 2. F. 26. c. Domino de Controvers. inter Domin. & emt. feud. 2. F. 42.* but there must be some probable Ground of Ignorance; such as of the Deeds of another, *l. ult. in f. ff. pro suo:* for Ignorance of his own proper Deeds, or of Law, will not excuse, *l. 6. & l. 9. ff. de jur. & fact. Ignorantia.* The Reason is, that there is no Contempt presum'd in ignorant people, *l. 50. ff. Locati.* The Vassal if there be not strong presumptions against him, may prove his Ignorance by his own proper Oath, *c. Domino 2. F. 32.* doubting is the same with Ignorance, *c. si de feudo §. Vassalus feudum 2. F. 26. c. lex Corradi §. fin. 2. F. 34. l. ult. C. de Condit. indeb. l. 22. §. 2. C. de furt.* If the Vassal have only bargained about alienating the Few, since it remains still his Property, he will not thereby forfeit it, *l. 67. ff. de V. S.* but if he hath given him possession, he loses the Few, *c. Imperialis in f. pr. 2. F. 52. c. Imperialem pr. vers. callidis*

callidis 2. F. 55. tho' the Vassal alienat the Few; if the Superior do not declare that he hath fallen from all Right, he will not suffer prejudice, l. 1. C. de *Revoc. Donat.* l. 2. C. de *jure Emphyt.* for in that case, it is presumed the Superior hath pass'd from his Right, and forgot or forgiven the Injury, §. *fin. Inst. de Injur.*

From all this it follows, that the Vassal cannot either sell the Few without the Superiors Consent, c. *Imperialem pr. vers. habito* 2. F. 55. or the price received, and Few both will belong to the Superior, c. *prima autem in f. que fuit prim. caus.* 2. F. 24. c. *imperialis* §. *si quis vero* 2. F. 52. except the Buyer was ignorant; in which case the price is to be restor'd to him, c. *Imperialem vers. nos autem* 2. F. 55. nor exchange it for other Land, l. 1. §. 5. & 6. ff. *quando de pecul. act. Annal est*; nor give it in pledge with the Possession, c. *imperialem pr.* 2. F. 55. l. ult. C. de *reb. al. non alien.* nor give it for payment of Debt, l. 46. ff. de *Usurp. & usucap.* l. 4. ff. de *publ. in rem act.* nor in any way make a Present of it, or gift it away, nor give it in Dowry, c. *est autem* §. 1. 2. F. 9. l. 9. cum *Auth. seq. C. de pact. Convvent. tam super dote* &c. except Women, who may give their Few in Dowry to their Husbands, c. *Titius de Invest. quam Tit. accep.* 2. F. 13. c. *qui sibi de eo qui sibi vel Hared.* 2. F. 17. the reason is, that the always remains in some manner Proprietar, l. 38. C. de *Jur. Dot.* nor can he give it so as another may use it, upon condition to meliorate or better it, to preserve its Substance entire, and to pay him a yearly Canon or Pension, which in Law is called *Emphyteusis*, l. pen. §. 1. ff. *qui satisfaci*

Of Delinquencies, &c.

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satisfd. cog. & l. 1. §. fin. ff. si ag. vectig. id est Emphyt. pet. nor can he compensate; for Compensation obtains only in Money, and things that are measured and weighted, or quantities, *l. 2. §. 1. ff. de Reb. cred. l. 18. ff. de pignor. act. l. 5. ff. de Impens. in res Dotal. fact.* not only is the Vassal thus punished, but the Notar who writes the Instrument of Alienation, is punish'd with the loss of his Office, with Infamy and his offending hand, *c. Imperialis 2. si quis vers. Notarium 2. F. 52. c. Imperialem pr. vers. scriba vero 2. F. 55. N. 17. c. 8. N. 42. c. 1. in f. l. 3. C. de serv. fugitiv. N. 142. c. 1.*

There are other Causes that do not arise from any Delinquency in the Few, but from other things, not feudall, for which the Vassal may be depriv'd of the Few: as if the Vassal attack any Fort or Lands, of which any part belongs to the Superior; he then loses his Few, *c. in Epistola vers. tutum de form. fidel. 2. F. 6. c. est & alia vers. si contigerit de Nov. form. fidel. 2. F. 7. c. quia supra pr. vers. similiter quib. mod. feud. amitt. 1. F. 5.* or if he attack a Fort, in which he knows his Superior is, *c. in Epistola 2. F. 6. C. est & alia 2. F. 7.* he loses his Few too, in assisting with his advice any body how to attack his Superior, *c. est & alia vers. ego juro 2. F. 7. c. si vassalus 2. F. 57.*

The same holds, if he reveal his Superiors Secrets, by which some real damage happens to the Superior, *c. in Epistola 2. F. 6. c. prima autem §. 2. vers. item si Delator 2. F. 24.*

The Delinquencies against others than the Superior, for which the Few is extinguished are,

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When

When the Vassal commits Parricide; by killing his Father, Brother or Brothers Son, *c. prima autem §. denique vers. si vero 2. F. 24.* and in a word, by the Fewdal Law, it is always reckoned Parricide, when any one kills another, that he himself may succeed the sooner to the Few, *c. si quis pr. 2. F. 37.* and all Texts speaking of Parricide are to be restricted to that, *l. 80. ff. de R. J.* As also when he treacherously kills, or sells his neighbour Vassal, or Vassals to Slavery; so that the Superior is defrauded of his Services, *c. si quis pr. 2. F. 37.*

The last Crime for which the Vassal loses his Few, is Treason or Læse Majesty, *c. felicis §. vers. si qua vero de pæn. in 6. l. 5. C. ad L. Jul. Majestatis.*

There are several other Crimes, mentioned in the Books of Lawyers, as great as these named; but since they are not named as Crimes, for which a Few shou'd be forefaulted, in the Fewdal Law I omit them, since no extention is to be made as to Criminal Cases, *l. 19. C. de Collat.*

C H A P. X V I I I.

Of Faults of Omission, and other Causes for which Fews are foresaulted, with the way of losing them, and to whom they are devolv'd.

FAULTS of Omission, for which the Vassal loses his Few, are those, If he know any great Danger or Hazard the Superior is in, and do not tell it, whether fraudulently or by supine Negligence, is all on, he loses the Few, *c. est § alia 2. F. 7. c. prima autem vers. praterea 2. F. 24.* If he know his Superior to be under unjust Restraint, and do not deliver him when it is in his power, *c. prima autem §. 2. vers. item si 2. F. 24.* If he refuse to aliment the Superior, when in need, as far as the value of the Few will go, *c. in Epistola 2. F. 6. si de feudo §. licet 2. F. 26.* If in Battel he desert his Superior, when alive or not mortally wounded, which Chirurgeons and Physicians must judge, *c. quia pr. quib. mod. feud. amitt. 1. F. 5. c. sancimus in f. de feud. sine culp. non amitt. 1. F. 21. c. prima autem §. 2. pr. 2. F. 24.* nor will it save the Few, altho' the Vassal err'd in thinking his Superior deadly wounded, *c. prima autem §. 2. vers. praterea 2. F. 24.* nor will

it avail ought, if after he fled he repent, and return; because the Superior, all that time, was expos'd, and beside Repentance never extinguishes Crimes already begun or perfected, *l. 65. ff. de furt.*

When one of two Vassals possessing indivisibly a Few deserts the Superior; both are not forefaulted, but only the party offending, *l. 51. ff. ad L. Aquil. l. 22. C. de pœnis l. 45. l. 52. s. ult. ff. pro socio*, but when a City possesses a Few, altho' a part of it desert the Superior, it loses no part of the Few, *s. 6. Inst. de rer. divis. l. 6. s. 1. ff. eodem.*

The Vassal forefaults the Few, if within the time limited by Law, he ask not Investiture or Seafine, *c. prima autem pr. 2. F. 24.* also, if he deny Justice, or appear not in Judgement when called by the Superior, *c. prima autem s. 2. vers. illud tamen 2. F. 24. c. Dominus de Milite vas. qui Contramax. 2. F. 22.* if he do not the Services due to the Superior, *c. sancimus de feud. sine culp. non amitt. 1. F. 21. c. prima autem s. 2. vers. sed non est 2. F. 24.* except he have a good Excuse, *d. s. 2. vers. aliud est*: If the Vassal too neglect for three years to pay the Cannon or Pension agreed on, he loses the Few, *c. prima autem s. 2. vers. sed non est 2. F. 24.* for a Few which requires a certain Cannon to be payed, is much of the nature of *Emphyreusis*: now three years neglect is so punished in that Contract, *l. 2. C. de Jur. Emphyt. l. 32. ff. ad L. Aquil.*

In those Fews that go not to Heirs, the Death of the Vassal extinguishes them; nor is the Superior, whoin that case is Master of his own Goods, obliged

liged to give it to the nearest of Kin, *c. est autem pr. qualiter olim pot. feud. alien. 2. F. 9. c. un. §. ult. Episc. vel Abbat. 1. F. 6. c. un. de Vassal. Milit. qui arm. bellic. deposuit 2. F. 21. l. 21. C. mandat. l. 2. ff. si a parent. quis Manumiss. &c.* If the Few perish, as if a House given in Few be burnt, it is extinguished; for a Few being a Right to such or such a Body or Matter; that being taken away, the Few falls of consequence, *pr. Inst. de usufr. & l. 2. ff. eodem.* If the Vassal renounce the Few in favours of the Superior, or nearest of Kin; as to him it is extinguished, *c. quidam de Vass. Decrep. etat. 2. F. 14. c. si Vassalus in f. de vassal. qui contr. constit. Lothar. 2. F. 38.*

If a Man be put out of all capacity of doing Fewdal Services; as if he becomes a Church-Man, or go into Orders; for in that case, being Christs Souldier whose Kingdom's not of this World, he must not medle with the temporal Sword, *c. si de feudo §. qui Clericus 2. F. 26. c. si femina in f. de feud. fem. 2. F. 30. c. Miles de Vassal. Mil. qui Arm. depos. 2. F. 21.* he loses the Few.

If a Man become deaf, dumb, blind or lame, or so diseas'd as no Physician can cure him, he loses the Few, *c. item si §. 2. Epist. vel Abbat. 1. F. 6. c. Mutus an Mut. vel al. Imperfect. 2. F. 36.* but if he can be cur'd, he may act by a Substitute till he recover, *c. si de feudo §. si quis decesserit 2. F. 26. c. prima autem §. 2. vers. aliud est 2. F. 24. c. imperialem de prohib. feud. al. per Frid. 2. F. 55.*

When the time is elapsed to which the Few was granted, it is extinguished, *c. item illud de Faud. Guard. 1. F. 2. l. 1. §. 6. ff. depos. l. 23. ff. de R. J.*
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The Superior loses the Property of the Few, for almost the same Causes that the Vassal, *c. si de feudo §. Domino committente 2. F. 26.* the Reason is, that the Superior and Vassal are equally bound to mutual good Deeds, *c. imperialis §. ult. de prohib. feud. al. per Lothar. 2. F. 54. c. in epistola de form. fidel. 2. F. 6.* so that the Superior loses the Property by denying Justice to the Vassal, *c. Dominus in f. de Vaf. Mil. qui Contum. 2. F. 22.* or if he do not defend the Vassal when in great Danger, *c. si de feudo §. Domino committente 2, F. 26. a. ex facto qual. Dominus propriet. feud. 2. F. 47.* or if without the consent of the Vassal, he alienate the Property of the Few, *c. lex Corradi §. ex eadem 2. F. 34. c. imperialem §. 1. f. 2. F. 55.* or if the Superior impignorate the Few without the Vassals Consent, *l. ult. C. de reb. al. non alien. l. 1. §. ult. ff. qua res pign. vel. Hypoth. oblig.*

The Superior too loses the Property, if he yield it to the Vassal, *§. 2. Inst. de Usufr.* or if the Vassal acquire the Property by prescription.

These are the ways by which a Few becomes extinct, yet the Sentence of a Judge is necessary upon them, *c. sancimus pr. de feud. fin. culp. non amitt. 1. F. 21. c. sancimus §. fin. quo temp. mil. Invest. 1. F. 22. c. si de feudo §. Vassalus si feudum 2. F. 26.* because a discreet Judge will know when there is reason to absolve, and not be byass'd with Interest, *c. Domino §. ad hoc. Hic finitur Lex 2. F. 28.* beside, for Orders sake that is not to be allowed to every person which publickly may be done by the Magistrate, *l. 176. ff. de R. J.*

As to whom Fews, when extinct, belong, Take the following Propositions.

If

If it be a new Few, whatever way it fall by the fault of the Vassal, it belongs to the Superior, exclusive of Children and nearest of Kin, *c. prima autem §. denique vers. si tamen beneficium 2. F. 26. c. Vassali si vas. Feud. privetur 2. F. 31.* the reason why Agnats are excluded is, because however they cou'd not succeed in new Fewes, *c. per successionem vers. his vero deficientibus de success. fratr. 2. F. 11.*

Children are excluded; because they are presum'd to have a little of their Fathers Disposition, *l. 5. C. ad L. Jul. Majestatis*; and that Charity and Kindness to Children, may oblige the Vassals their Parents to be more faithful to their Superiors.

If the Few be an ancient Few, and the Vassals Delinquency be against the Superior, the Few will return to the Superior, and not go to the Agnats or nearest of Kin; because it is presum'd at the granting of the Few, that if the possessor should commit Delinquencies against the Superior, he shou'd lose his Few; and that excluding his Successors, it shou'd return to the Superior, *c. prima autem §. denique 2. F. 24. c. si quis in f. pr. an illo qui interf. frat. Domin. 2. F. 37.* but if the Delinquency be not against the Superior, but some other, the Few goes to the Children or nearest of Kin, *c. prima autem §. denique 2. F. 24. c. si de feudo §. si Vassalus culpam 2. F. 26. c. vassali 2. F. 31. c. si quis pr. 2. F. 37.* and they are not oblig'd to wait the Death of the Delinquent, but may enter into the Possession of the Few, *c. prima autem §. denique 2. F. 24. c. si quis pr. 2. F. 37.*

If the Few end by reason of the Vassals Death, and for no Crime, if his death be before the beginning of *March*, all that years Revenue will belong to the Superior; but if betwixt the beginning of *March* and end of *August*, the Fruits will belong to the Vassals Heirs; but if after *August*, they will belong to the Superior, *c. Domino S. his Consequenter 2. F. 28.* but if by some Delinquence of the Vassal the Few end, all the Fruits, not yet reap'd, will belong to the Superior or nearest of Kin, *l. 44. ff. de Rei Vind.*

As for any extraordinary Meliorations or Accessions; if by the Vassals fault the Few be lost they will go together with the Few to the Superior, or nearest of Kin, *l. 2. C. de Jur. Emphyt.* but if it end without the Vassals fault, and the Meliorations have been made by the Vassal; if they can subsist by themselves, as a House built on the Few, or an accession of Ground, they will belong to the Vassals Heirs; but if they cannot subsist alone as Servitudes, then they will belong to the Superior, *c. cum de re S. e. contrario d. Invest. de re al. fact. 2. F. 8. c. Domino S. si vassalus 2. F. 28.*

If by no Industry any accession be made to the Few, when it is extinct it will belong to the Superior.

As to the Superiors committing any fault which takes away his Property; against whomsoever it be committed, the Property will go to the Vassal, *c. si de fundo S. Domino committente 2. F. 26.*

CHAP. XIX.

Of Fewdal Judgement.

IN pursuits at Law, there must be two or more Parties contending with their helps, Advocats and Procurators, and a Judge or Judges with their Assistants, Writers or Keepers of Registers, Officers to execute their Sentence; as Messengers and a lower sort of people who cite Parties before the Judge, called in Law *Apparitores*, l. 13. & L. seq. l. 62. ff. de Jud.

When then a Fewdal Debate begins, if it be betwixt Dukes, Marquisses and Earles, who hold of the Emperor, he is sole Judge, c. si contentio apud quem vel quos controvers. 1. F. 18. c. lex Corrad. pr. de lege Corrad. 2. F. 34. but betwixt lesser sort of Vassals, their immediate Superior is Judge competent, c. imperialem §. 2. vers. praterca 2. F. 53. altho' he be a country Clown, who in other cases hath no Jurisdiction, l. 3. C. de Jurisd. omn. Jud. because the Fewdal Law makes no Distinction; and when no distinction is made, it is no private Mans part to make it, l. 8. ff. de publ. in rem act. altho it be a Woman who is Superior, and who is excluded by the Civil Law from all Jurisdiction, l. 2. pr. ff. de R. J. l. 12. §. 2. ff. de Judic. yet since she is permitted to give Fews, c. investitura §. 1. vers.

minam per quos fiat Invest. 2. F. 3. she is also allowed to judge in fewdal Controversies, *c. imperialem* §. 2. *vers. praterea* 2. F. 55. the Superior too is Judge altho' the Vassals be Clergy-Men, *c. ex transmissa* 6. & *seq. extr. de foro compet.* whether in greater or smaller Fews, *c. praterea* 2. F. 55. nor can the Vassal, leaving his Superior, prorogate another Judges Jurisdiction, *d. vers. praterea* 2. F. 55. for tho' the Civil Law allows prorogation of Jurisdiction, and it be no where expressly abolished by the Fewdal Law, *l. 1. & 2. ff. de Judic. c. Oberus in f. pr.* 2. F. 1. yet it is always to be taken with this limitation, if it be not to the prejudice of a third-Party; but if it be contraverted, whether the Parties contending be Vassals, the Cause must be determined by the Judge Ordinar, *c. imperialem* §. 2. *vers. praterea* 2. F. 55. If one of the Vassals about the Few pretend, it is an ancient Few, the other, that it is a new Few; the question will not be determined by the Superior, whose Advantage it is to have it a new Few, but by the other Vassals (or *Pares Curia*) of the same Superior, *c. ex eo an apud Jud. vel Cur.* 2. F. 46. or if there be none of these, the Case is to go to the Judge Ordinar: the Superior if either tacitly or expressly he consent, that the Cause go to the Judge Ordinar, he cannot claim his Priviledge of being Judge; or if the Superior refuse to do Justice, or cognosce, the Pursuer may convene the Defender before the Judge Ordinar of the place, *l. 2. C. de Jurisd. omnium Jud.* or he may go to a higher Judge, who will force the Superior to cognosce and give Sentence, *l. 3. §. fin. ff. de recept. Arbitr.* And if the Superior do Injustice, the Vassal may

may appeal to his next immediate Superior, or if after order the Superior refuse to hear and determine, the Superior may at the Vassals instance be pursued and deprived of the Superiority, which will accresce to the Vassal, *c. prima autem* §. 2. *vers. illud tamen* 2. *F. 24. c. ex facto qualiter Dominus propriet. feudo* 2. *F. 47.* or if the Vassals be miserable persons, such as Widows, Pupils, and such like; by a special Priviledge, their Cause may, at first Instance, be determined by the Prince, *l. un. C. quando Imp. inter pupill.* and not by their Superior; for tho' the Fewdal Law says in general, that betwixt Vassals the Superior is Judge, yet it is a Rule in Law, That posterior general Clauses in Laws doth not abrogat special particular Laws, *l. 26. C. de test. l. 8. C. qui test. fac. poss.*

If there be any Debate betwixt the Superior and his Vassals, his other Vassals (or *Parcs Curie*) are Judges, *c. imperialem vers. praterca* 2. *F. 55. c. si similiter Dominum de Controv. feud apud par. termin.* 2. *F. 10. c. ex eo de controv. inter Epist.* 2. *F. 20. c. alienatio* §. *si inter de al. pater. feud.* 2. *F. 39.* the reason is, That none can be Judge in his own Cause, *l. 17. in f. de Judic.* but every Vassal of the same Superior does not judge, but a number agreed upon and equally chosen by the Superior and Vassal contending, *c. si inter Dominum* 2. *F. 16.* but if either the Superior or Vassal refuse to Elect, tho' that ordinarily it is reckoned unjust, for that person to judge whom one of the Parties hath expressly nominated and desir'd *l. 47. ff. de Judic.* yet to punish Wilfulness and Contumacy, those Vassals nam'd by the other Party, when one refuses to name, may freely judge, *l.*

22. §. 1. ff. de fidei com. libert. indeed if by a Clause inserted in the Investiture, that any of the two alone shall name the Judges, it will be an exception, l. 1. §. 6. ff. depos. l. 23. ff. de R. 3. all the Vassals who judge, must have sworn the Oath of Fidelity to the Superior, and then there will be no need they shou'd swear to Judge according to Law, c. imperialem vers. prater ea 2. F. 55. c. si inter Dominum 2. F. 16. c. prima autem §. 2. vers. illud tamen 2. F. 24. c. ex facto qualiter Dominus. propr at. 2. F. 47. no Vassal nam'd dare refuse to be Judge, or he may be forc'd by the Superior or higher Judge, because it is a publick Office, which none must refuse by the Civil Law, l. 9. l. ult. §. 14. ff. de Muneribus & Honoribus l. 3. C. de Crim. sacrileg. which not being abrogate by the Fewdal Law, is still of Force, l. 32. §. fin. C. de appellat. C. Obertus in f. pr. 2. F. 1.

This, of none being Judge in his own Cause, is so true, that even the King or Emperor cannot judge in mutual Claims betwixt their Vassals and them, c. imperialem Vers. prater ea 2. F. 55. for sometimes those of a higher dignity may contend before those of a lesser, l. 14. ff. de Jurisdic. whether the Claim be about Property or Possession, c. imperialem vers. prater ea 2. F. 55. c. si inter Dominum 2. F. 16. c. Dominus vers. si vero Vassalus de Mil. Vas. qui contumax est 2. F. 22. or whatever be the Action, c. sancimus §. ult. quo temp. Mil. Invest. pet. 1. F. 21. c. Dominus vers. si vero Vassalus 2. F. 22. Or tho' the Vassal hath no other Few, but that about which the Controversy is with the Superior, c. alienatio §. si inter de al. pater Feud. 2. F. 39. yet if the Controversy be only about

about a Superiors promising to Invest in a Few; the other Vassals will not be Judges competent, but the Judge Ordinar, *c. ex eo de controvers. int. Episc. 2. F. 20. c. alienatio §. si inter 2. F. 39.* or if there be no Vassals, the Judge Ordinar must determine; if both Superior and Vassal consent to go before the Judge Ordinar: if the Superior or Vassal contend with a Stranger, they must go before the Judge Ordinar, *c. Fridericus §. 2. vers. quod si de pac. tenend. 2. F. 27. c. Domino de Controv. int. Domin. & emt. 2. F. 42. c. si controuv. de controuv. int. Vass. & al. 2. F. 42.* The Jurisdiction of Superiors and Vassals, here narrated, is ordinary, or which, by the Fewdal, is competent to them as such, and not by any special Priviledge, which is called Extraordinary, *c. imperialem vers. praterea 2. F. 55. l. 6. ff. de Jurisd.* and therefore it can be committed to others, *l. 5. ff. de Jurisd. l. un. C. qui pro sua Jurisd.*

The Actions competent by the Fewdal Law to the Superior, are *Rei Vindicatio*, by which, because of his Supream Property, he can claim back the Few from any possessing it unjustly, *c. Obertus in quib. caus. feud. amitt. 2. F. 23.* All Actions descending from any real Right, are called in Law *Vindicationes*; and that Action which arises particularly from that real Right nam'd Property, is called *Rei Vindicatio*. All personal Actions are *Conditiones*.

Condictio causa data non sequuta, which is a personal Action against the Vassal to restore the Few, for not performing the Services agreed on, *C. sancimus pr. de feud. sine culp. non amitt. 1. F. 21.* or for Ingratitude.

Condictio

Condictio ex Lege, which is a personal Action taking place, when no other Action is competent, *l. un. ff. de Condict. ex leg.* and he only can be pursued who, by Contract or Delinquency is bound, and not extraneous Possessors, *§. 1. Inst. de Action. l. 25. pr. ff. de Obl. & action.*

Interdicts too are competent to the Superior, which are extraordinary Actions before the Praetor, in which about Possession he determines Orders, and commands something to be done

Actions competent to the Vassal, are *Utilis Rei Vindicatio*, by which he can claim the Few from any Possessor, *c. cum de re §. rei autem de Invest. de real. fact. 2. F. 8.* even against the Superior, if he have any way got the Possession, *l. 1. ff. si ager vetigal.*

For asserting his Right to Servitudes, he hath Actions Confessory; by which he claims a Servitude on another Mans Ground, and Negatory, by which he claims a Liberty from Servitude to his own Grounds, *c. cum de re §. rei autem 2. F. 8.*

Condictio ex Lege, by which the Vassal claims another Few from his Superior of equal Goodness with a Few received, and evicted from him, *c. cum de re pr. 2. F. 8. c. negotium si de feud. Vass. ab al. interpel. 2. F. 25.*

Interdicts too, are competent to the Vassal, except that which is call'd *unde vi*, by which a Man doth contend he was illegally and by force put out of his Possession, and therefore craves to be restor'd, and to get all the Emoluments: this is not competent against the Superior, for whom he shou'd have more respect than intent any such Action; but he may narrate the matter of Fact, and simply de-

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fire redress, which is call'd *Actio in factum*, there is too, a Revocatory Action, competent to the Vassals Children and Agnats, or nearest of Kin whereby they can revoke the Few, unjustly alienated by the Vassal Defunct, *c. si de feudo §. Titius filios 2. F. 26. & vers. quod si Titius eodem.*

Fewdal Process is just like that of the Civil Law, except as to the following Differences; by the Fewdal Law there must be three Citations precisely, *c. Dominus de Mil. vas. qui contum. 2. F. 22. c. prima autem §. 1. 2. F. 24.* whereas by the Common Law, one Peremptor suffices in place of three Citations, *l. 53. §. ff. de Re Jud.* neither Superior nor Vassal can require an Oath of Calumny of each other. An Oath of Calumny is when the Defender desires the Pursuer to swear, he thinks he hath good reason to pursue, or when the Pursuer craves an Oath of the Defender, whether he thinks he hath just reason to defend, *c. sciendum §. 1. de Consuet. rect. feud. 2. F. 23.* for the mutual Fidelity they promise to one another, and which the Vassal swears, is thought sufficient instead of the Oath of Calumny, *c. in epistola in f. de form. fidel. 2. F. 6.* now the Civil Law requires such an Oath, *l. 2. C. de Jure Jur. propter Calumn.* but if two Vassals be contending betwixt themselves, they may require an Oath of Calumny of each other; because the Fewdal Law hath not determin'd in it, and therefore we must stand to the Decision of the Civil Law, *c. Obertus in f. pr. 2. F. 1.*

None but Men can be Witnesses in Judgement, by the Fewdal Law, *c. siue Clericus qui Test. sunt necess. 2. F. 32.* whereas by the Civil, Women may

may be Witnesses, some few cases excepted, *l. 18. ff. de testib. l. 20. §. 6. ff. qui test. fac. poss.*

None can be Witnesses to a new Investiture, but Vassals of the same Superior, or *Pares Curia, c. siue Clericus 2. F. 32.*

There must be by the Fewdal Law five Witnesses to prove Ingratitude, *c. si Vassalus quot test. sunt. necess. 2. F. 57.* two in any case almost, except Testaments, are sufficient by the Roman Law, *l. 12. ff. de testib.*

By the Civil-Law, when the Pursuer proves not, the Defender is absolv'd, *l. 4. C. de edend.* but by the Fewdal Law he is not absolv'd, but forc'd to clear himself by Oath, taking twelve Men, not Witnesses, who swear they know the Defender to have sworn right, *c. si autem §. 2. si de Invest. feud controvers. 1. F. 4. c. sciendum pr. 2. F. 33.* or by Duell, *c. alienatio §. sed non est Consuetudo de al. pater feud. 2. F. 39.* or by search, *c. Fredericus vers. similes §. 3. 2 F. 27.*

As for Sentence or Decreet, it must be conform to Law and Custom, *pr. inst. de offic. jud.* And first of all, the Investiture is to be look'd to, *c. si duo de fratrib. de nov. benef. Invest. 2. F. 12. c. duo fratres de duob. fratrib. a capit. Invest. 2. F. 18.* then the special or particular Custom of any Place; then the general Fewdal Customs, what resembles them, if the two be deficient, and lastly the written Law, *c. Obertus in f. pr. 2. F. 1. l. 12. ff. de L. L.* If many different Investitures be produced in Judgement, the oldest is to be most respected, and posterior ones are reckoned as Accessions or Confirmations of the first, and not to alter

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ter its nature, *c. accessorium de R. J. in 6.* or if there be any difference, it is presum'd to be erroneously done, *l. 25. ff. de probat.*

As for Appeals, they must be gradually, always to the next immediate Superiors, as in the Roman Law, *N. 17. c. 3. in f.* and they must be notified to the Judge, (from whom the Appeal is made) within a prefixt time, which is singular in the Fewdal Law, which prescribes in six Weeks, *c. sancimus §. fin. quo temp. Mil. invest. pet. 1. F. 22.*

This is singular as to Execution too; that without the Superiors Consent, no Execution can affect the Few, but only its Fruits.

The Superior or his other Vassals, called, *Pares Curia* may so far execute the sentence, as to command the Vassal to obey, under the Penalty of losing the Few; or they may decern another Man to be put in possession of his Goods, but they cannot of themselves put any body in that possession, but must implore the assistance of the Judge Ordinar.

If Sentence be given against the Superior for the Vassal; the Execution cannot reach all he hath but so much as he can conveniently spare; *l. 17. ff. Re Jud. c. Notandum est. pr. de Not. feud. 2. F. 58.*

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Of the Differences betwixt the Fewdal and Scots Law.

1. **B**Y the Fewdal Law, there were Proper and Improper Fews.

By the *Scots* Law, there are no Proper Fews; but that which comes nearest to them is our Ward-holdings.

2. By the Fewdal Law, *Franck* or *Blench*-Holdings, pay only Honour and Respect.

By our Law, *Blench*-Holdings in their *Redden-do* pay a Rose, Snow-ball, or some small thing.

3. By the Fewdal Law, the Vassal must always take an Oath of Fidelity; except when it is expressly remitted.

By the *Scots* Law, tho' it be always due; yet it is never almost required.

4. By the Fewdal Law, if a Few be evicted, the Superior is obliged to give as good a Few; and the Vassal is not obliged to take Money in place of it, except he pleases.

By our Law, if a Few be evicted, the Superior, as in the *Roman* Law, will be free by giving the Vassal the value in Money.

5. By the Fewdal Law, all Superiors are obliged to warrant the Fews; in case of Eviction.

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By our Law, the King, if Superior, is not obliged to warrant a Few from being evicted.

6. By the Fewdal Law, all the Vassals Sons succeed equally to the Few, except as to Titles of Honour annexed thereto; to which the Eldest succeeds, they being things Indivisible.

By our Law, the eldest Son succeeds in the Few.

7. By the Fewdal Law, Supream Judges might be given for one year.

By the Claim of Right, our Supream Judges must continue till Death, Dimission or Deprivation for Crimes.

8. By the Fewdal Law, Collaterals did not succeed in new Fewes.

By our Law, they succeed in new, als well as old Fewes.

9. By the Fewdal Law, Nobility was conferr'd with Fewes, and express'd in the Investiture, which was once too the Custom in *Scotland*:

But now, in *Britain*, Nobility is conferred by a Patent from the Sovereign.

10. By the Fewdal Law, there are Fewes granted for Lifetime, & others to continue but for one year.

By the *Scots* Law, all Fewes are Perpetual and go to Heirs unless Liferent-Infeftments be called such, or Pensions for Life, or Gifts of Liferent-Escheats may be denominate Fees, like *feuda de Camera & de Cavema &c.*

11. By our Law, Infeftment of an Annualrent, out of Lands, is reckoned a Few.

In the Fewdal Law, I do not find it nam'd.

12. By the Fewdal Law, when for any Delinquence whatsoever, a noble Few was forefaulted, the Vassal became Ignoble, and his Blood was tainted

By our Law, he still remains Noble, except he hath been sentenced; or forefaulted for high Treason, or such Crimes as formerly (before the late Act of the *British* Parliament) did infer the Penalties of Treason, commonly called Statutory Treason.

13. By the Fewdal Law, there is such a thing as, *Feudum Habitationis*.

By our Law, there is no such Few.

14. By the *Roman* and Fewdal Law, Women might grant Fews without their Husbands Consent, of their own proper Lands; of which the Husbands had only the Usufruct during Life.

By our Law they cannot; for they are under the Tutor and Curatory of their Husbands in *Scotland*.

15. By the Fewdal Law, Prodigals who spare nothing, could not grant Fews.

By ours they can, till they be declared so by the Sentence of a Judge.

16. By the *Roman* and Fewdal Laws, a Minor, tho' with consent of his Curators, cannot alienate Lands and Tenements, without the Sentence of a Judge; after Tryal in the matter.

By our Law, tho' a Minor have the Consent of neither, the Deeds are valid till reduc'd; if such a Minor never had Curators, or that they have ceased, nor will they be rescinded, except the Minor prove himself les'd: this was determin'd, as *Craig* p. 83. *F.* observes between *Lindsay* of *Barcklay*, and *James Borthwick* of *Lochill*.

17. By the Common and Fewdal Law, even in granting new Fews, a Procurator *cum libera*, or an universal Manager of a Mans Affairs, needs not a special Mandate.

By ours, he must have a special written Mandate.

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18. By the Fewdal Law, be Men never so sick, or on Death-Bed; if they be in their Senses and Wits, they may, at any time, dispose of, or grant Fews.

By our Law, Deeds done on Death-Bed, (by which is meant within sixty days of ones Death) in prejudice of the Heir, may be reduc'd, conform to Act 14. Parliament 1696.

19. By the Fewdal Law, Superiors may dispose of their Lands by Testament, tho' Vassals cannot.

By our Law, neither Superior nor Vassal can.

20 By the Fewdal Law, Sons cou'd not grant Fews, except they were *jure familiat*.

With us, there is no such thing; unless the Son be a Minor, and thereby under Curatory of his Father as lawful Administrator.

21. Popes can grant Fews out of their own Territories, in any place by the Canon Law; which most part of Fewdalists have adopted into the Fewdal Law.

By our Law, he hath no power at all, and he, who begs Right to any Benefice in Scotland from him, may be punished.

22. Prelats, without Consent of their Chapter, may renew the Investiture of old Fews, but not constitute new ones, by the Canon and Fewdal Law.

By the Scots Law, the Consent of the Chapter or Patron, is absolutely necessary, even as to renewing Investiture; especially if it contains a *Novo damus*.

23. By the Fewdal and Canon Law, a person excommunicated cannot receive a Few granted to them.

By our Law, Horning, the only Sting of Excommunication by the old Statutes, is remov'd; so that it hath no such civil effect.

24. By the Canon and Fewdal Law, Usurers are not in a capacity to take the Grant of a Few.

By our Law, they may.

25. By the Fewdal Law, *Banniti*, or those at the Bane, cannot take a Grant of a Few.

By our Law, *Banniti*, or those simply at the Horn, are not forbid.

26. By the Common and Fewdal Law, a Father cou'd not give a Few to a Son in his Family.

By our Law, If he gave one, to be holden of himself, it did not exclude posterior Creditors, tho' the Father were solvent, but being *inter conjunctas personas*, was reckoned collusive; before the late Act which thereafter requires not Possession to base Infeftments: yet a Father might always bestow a Few upon his Son; providing he resign'd in the Superiors hands for that effect.

27. By the Fewdal Law, in no case, a Judge is hindered from receiving a Grant or purchasing a Few.

By our Law, If there be a Controversy about the Few, depending before the Lords of Session; no Senator, under the pain of *Deprivation*, may purchase a Right to it.

28. By the Common and Fewdal Law, private Sepulchres could not be given in Few, or alienated.

By our Law, they may; tho' publick Church-Yards cannot; unless there be a Legal Grant, or Prescription of a private Sepulchre in a Church-Yard.

29. By the Common and Fewdal Law, a Wifes Land Estate given in Dowry, cannot be alienated, or given in Few by the Husband.

By our Law, a Husband may alienate, or few it out with his Wifes Consent.

30. By the Fewdal Law, the Prince could do every thing, make Laws, or alienate the Patrimony of the Crown.

By our Law, without Consent of Parliament, he cannot give in Few the annexed Patrimony of the Crown, except in the cases of the several Acts of Dissolution; tho' he may set Tacks of it, without the Diminution of the Rental.

31. By the Fewdal Law, the Prince might at pleasure lay on Taxes: and that Priviledge was among the *Regalia*.

By our Law, none can do it but King and Parliament; tho' *Craig* is of opinion, that in case of great necessity, a City, with the general Consent of its Burghers, can tax themselves, *Cr. p. 113. Feud.*

32. By the Fewdal Law, the Goods and Estates of persons, proscribed or condemn'd to die for Crimes, goes to to their Ascendents and Descendents (if they have any) or failing them, to the King.

By our Law, whatever moveable Estate they have goes to the King; unless in the case of Regalities, which have the Priviledge: formerly indeed the Town of *Edinburgh* got the Goods of all those condemn'd for committing Murder within the Town; which Priviledge if they have yet, I am not so sure.

33. By the Fewdal and *Roman* Law, incestuous Marriage was only punished with Confiscation of Goods.

By our Law they are capitally punished.

34. By the Fewdal Law, Fishings are not reckon'd among the *Regalia*; nor do I think the Texts commonly

commonly alledg'd out of the Civil Law, proves them to be so by that Law either.

By the *Scots* Law, Salmon Fishings in Rivers are among the *Regalia*.

35. By the Fewdal Law, there was a Proper and an Improper Investiture.

By our Law, we have now no Proper; for the Superior gives a Charter with a Precept of Seafine, which being produc'd to the Baillic constitute for that effect; Seafine is given symbolically to the Vassal, and an Instrument taken thereupon.

36. By the Fewdal Law, the *Pares Curie*, if there be any, must be Witnesses in the Investiture of all Lands, except of Church-Lands.

By our Law, that is not at all needfull.

37. By the Fewdal Law, one being made a *Guardus*, *Castualdus*, or *Balivus*, his acting upon his Title was in place of Investiture.

By the *Scots* Law, some sort of Seafine by Symbols is necessary; as giving the Court Books, or Keys of a Fort, or a Penny in Annualrents.

38. By the Fewdal Law, write in Investitures was not necessary; but the *Pares Curie* prov'd all.

By our Law, it is absolutely necessary.

39. By the Fewdal Law, If there be no Witnesses alive, when a Controversy arises about the Few; whoever be in possession, Superior or Vassal, the matter will be referred to his Oath.

By our Law; if the Write be lost, the Tenor of the Investiture must be proven: and then the Lords will order it to have the Force of a written Seafine.

40. By the Fewdal Law, the Sentence of a Judge does not constitute a Few, but declares what was Fewdal.

By

By our Law, it so constitutes it, that tho' the Lands be really Allodial, they will be reckon'd Fewdal, till Reduction of the Decreet.

41. Prescription of forty years by the Fewdal Law, without so much as any colourable Title, constitutes and perfects a Right.

By our Law, there must be some colourable Title, except in Church-Benefices; where Thirty Years since the Reformation, or Ten Years Possession before it, is a good and valid Title.

42. By the Fewdal Law, If a Condition be added, that the Vassal shall not alienate the Few; which, tho' not express'd, is in the very nature of all Fews; it will receive no Interpretation, but that the Superior hath added what he needs not have done for the better Security, & *nimia securitas non nocet*.

By our Law, such a Clause added will debarr the Vassal from Sub-Fewdation; the reason given by our Lawyers, is that all words must be understood to operate something: to which the Fewdalists may answer; that we do not keep close to our own Rule: as for example; we ordinarily name all the Parts and Pertinents specially, when the general Word *Pertinents* comprehends them all: beside Laws and Clauses of Writes shou'd be explained in the most favourable Sense; whereas the way we explain this Clause, is most unfavourable for the Vassal.

43. By the Fewdal Law, if two conjunctly, be simply infest in a Few, if one die; his Portion or half returns to the Superior the Granter, and does not accresce to the Survivor.

By our Law, If one die his half goes to his Descendents, tho' no mention be made of them; and if he have none, it will accresce to the Survivor;

in which we agree with the Civil Law, whereby every Man acquires to himself, and his Heirs, tho' they be not nam'd, according to the several Distinctions contain'd in our Law Books.

44. By the Fewdal Law, the Vassal is to reckon the Possession vacant, and may, enter in it, when his Inveſter is only in Possession.

By our Law, vacant Possession is when the Few is possessed by none.

45. By the Fewdal Law, Forts and Castles, as well as other Houses on the Ground, were comprehended in the Grant of a Few.

By our Law, Houses are; but Forts and Castles are not; except, when Counties and Baronies are given in Few.

46. By the Fewdal Law, Mills are comprehended under the Terms of Parts and Pertinents.

By our Law, they are not comprehended; but must be specially named.

47. By the Fewdal Law, a Vassal cannot constitute an Uſufruct or Lifeſerent upon the Few.

By our Law, he may; except in Ward-Holdings, and then the Superiors Consent must be had; or what's done will be of no effect as to the Superior, for excluding his Casualties.

48. The Fewdal Law does not impose a Payment of a Third of the Rents of a Few, to be given to the Vassals Wife.

Our Law imposes that Burden, which is called the *Widows Terce*.

49. By the Fewdal Law, a Vassal when he will, may renounce the Few even without the Superiors Consent.

Betwixt the Fewdal and Scots Law. 97

By our Law, it is not always allowed; for if a Vassal holding Ward, to shun paying the Casualty due to the Superior upon his Marriage, should before offer to renounce; he will not be allowed, untill he have first payed the Casualty fallen due.

50. By the Fewdal Law, the Vassal was to assist the Superior in his Wars with his Neighbours, and the Superior too, was to help the Vassal in his.

By our Law, none hath power of making War but the King; and all private Wars formerly called *Feuds*, are illegal.

51. By the Fewdal Law, If the Superior be under Sentence of Excommunication, the Vassal is not obliged to perform Fewdal Services, till he be restored.

By our Law, (as is already said) Excommunication hath no such Civil Effect at all.

52. By the Fewdal Law, the Vassal, if the Few can bear it, is obliged to pay his Superiors Debt for which he is in Custody, and relieve him from Prison.

By our Law, he is not obliged to pay one Groat; tho' Humanity and Gratitude shou'd operate something.

53. By the Fewdal Law, the Vassal cannot pursue his Superior in the Action *unde vi*, which we term *Ejection*, nor *vi bonorum raptorum*, by us term'd *Spulzie*; but must simply narrate the Fact, and crave his Superior to be decern'd in the true value of the Loss; which value must be otherways proven than by the Vassals Oath.

By our Law, the Value is referr'd to the Vassals Oath.

54. By the Fewdal and Civil Law, a Man is still Minor till he be Five and Twenty.

By the Scots Law, one is Major after One and Twenty, and may be then chosen a Member of Parliament; yet till Five and Twenty Years, is not capable of being one of the Lords Ordinary of the Session.

55. By the Fewdal Law, If either Superior or Vassal die, or be changed, new Investiture must be asked.

By our Law, it is only ask'd to be renew'd when by Death, or any other way the person of the Vassal is changed.

56. By the Fewdal Law, new Investiture must be ask'd by the Vassal, with all humility, personally by himself.

By our Law, it may be asked by a Procurator, specially constitute for that Effect.

57. By the Fewdal Law, If the Vassal did not within year and Day, after he knew of the Right fallen to him, ask new Investiture, he lost the Few; and if the Superior when ask'd did refuse it, he lost all Right of Superiority.

By our Law, the Superior refusing being requir'd in the habile way establish'd by our Forms, loses all Casualties of the Few due to the Superior all the Vassals Life, and the Vassal will be Infeft by the next immediate Superior; and if the Vassal neglect to ask new Investiture, the Few will fall in Nonentry; which when declared, gives the Superior a Right to the whole profit of the Few, till the Vassal purges his Neglect.

58. By the Fewdal Law, Children legitimated cou'd not succeed to their Fathers Few.

By

92 *Betwixt the Fewdal and Scots Law.*

By our Law, If they be legitimated by their Fathers marrying their Mother; they may succeed to their Fathers Few, but not if it be by the Rescript of the King.

59. By the Fewdal Law, the Term of, Heirs whatsoever, comprehends only all Males.

By our Law, it comprehends Men and Women.

60. By the Fewdal Law, the Superiority, or *Dominium directum* divides among the Superiors Heirs.

By our Law, the Superiority goes to the Eldest; even in the case, where all the Children succeed equally; which is when Femals or Heirs Portioners succeed.

By the Fewdal Law, a Clergy-Man could not acquire a Few by Succession.

By our Law, he may, tho' I am dubious as to a Ward-Holding; because it is granted for Military Services, nor is the Superior obliged to receive performance of them by a Depute, and a Clergy-Man cannot perform them himself; nor do I think it enough, if after the Right is fallen to him by Succession, he, to enjoy it, shou'd turn Laick; because not being in a Capacity when the Right fell due, there was thereby a *Jus quasitum* to the next Heir; which without a cause cannot be taken from him; beside, a Minister wou'd thereby declare himself a very bad Man, that he only had taken up that Profession for a Lively-hood, or Hire, to quite it again for a greater Gain: yet tho' he cannot acquire by Succession, I do not doubt but they may receive a Grant of a Military Few from a Superior; because a Superior knowing a Man to be a Clergy-Man, a Soul-dier

dier of Christ, who shou'd neither medle with the Civil Government or Temporal Sword, and yet grants him Ward-Lands; he seems either to have dispenced with the Services, being performed by the Vassal himself, or the Grant wou'd be worth nought, and therefore seems to have allowed of a Substitute, by whom if he be not so well serv'd, he hath himself to blame.

62. by the Fewdal Law, if the Father be obliged to Infeft a Wife and her Children in the Fee, he cannot after her Death dispoise it to another Wife, and the Children of that second Marriage in prejudice of the first.

By the *Scots* Law, since the Father during the time of the first Marriage, might notwithstanding of the Obligement to Infeft, dispoise to a Stranger the Fee for an onerous Cause: it hath been decided, that he may do it to a second Wife and her Children, so far as the Provision in favours of a second Marriage shall be found competent; because Marriage is always reckon'd an onerous Cause.

63. By the Fewdal Law, in collateral Succession there is no difference made betwixt Brother German, and Brother Consanguinean, or of the same Father, but not of the same Mother; as to the Estate of their deceas'd Brother, to which they equally succeed.

By our Law, the Brother-German, or full Brother on both sides, excludes the other.

64. By the Fewdal Law, Brothers succeed equally to Brothers.

By the *Scots* Law, the immediate youngest succeeds in the Heritage, and the next eldest in the Conquest.

Between the Fewdal and Scots Law. 101

65. By the Fewdal Law, none can be upon the Inquest about examining the Right of Succession to a Few, but the Vassals of the same Superior, of whom it holds; in Law called *Pares Curia*.

By our Law, even Strangers whose Revenues of Lands are above Forty *Pound Scots* Money yearly; tho' they be not Convassals, may be Members of the Inquest for serving Heirs; beside that by the present Custom, even this Restriction is not observed.

66. By the Fewdal Law, the *Pares Curia*, who were Members of the Inquest, for serving Heirs, took no Oath at their Admittance.

By our Law, the Members of the Inquest at their Admittance must swear an Oath *de fide*, and the Brieve or Command to the Judge Ordinar to appoint them, bears expressly an Oath to be taken.

67. By the Fewdal Law, a Stranger born in another Country, cannot succeed to a Few, tho' he may receive a Grant of one from a Superior.

By our Law, Strangers may succeed by the late Act of the *British* Parliament, for Naturalizing of Forreigners, being Protestants.

68. By the Fewdal Law, Furious and Mad People being incapable of performing Services; could not succeed to a Few after the Death of a Vassal, yet if a Superior pleas'd to grant them a Few, they might by help of a Curator acquire it, and for services due to the Superior; let him blame himself, if he want them.

By our Law, they may succeed to Fewes.

69. By the Fewdal Law, Minority, Prison or Captivity are good Excuses why a Vassal did not ask new Investiture within Year and Day.

By our Law, they are no good exceptions against Nonentry.

70. By the Fewdal Law, when the Vassal renounces all Right to an old Few, the advantage of it accresces to the Superior, during the Vassals Life; but when he dies, his nearest Agnats may claim the Few.

By our Law, when a Few is absolutely renounced, or as we term it, resign'd in the Superiors hands, *ad perpetuam remanentiam*; it will for ever belong to the Superior, and the Agnats after have no Claim, except it be a tailzied Estate, with Clauses irritant, and a Clause *de non alienando*, in which case, one Member of the Tailzie cannot alienate in prejudice of the other Substitutes.

71. By the Fewdal Law, a Debt is said to be liquidate, when it is known what Measure, Weight, Quantity, or Number is due.

By our Law, tho' a Man were owing an Hundred Bolls of Corn, yet the Debt is not for that liquidate, untill by Sentence of a Judge the value be determined to a clear Sum of current Money.

72. By the Fewdal Law, the Vassal cannot alienate any part of the Few, without his Superiors consent, or the part alienated goes of course to the Superior.

By our Law, the Vassal may alienate one half, but if he dispose of any more, if it be a Wardholding, all falls to the Superior, which we term, Recognition.

73. By the Fewdal Law, if the Superior be present at the Alienation, and do not oppose it; he is presum'd to consent, *l. 4. §. ult. ff. de fide-juss. & nominat. & hered. tutor. C. si Clientibus de alien. feud. 1. F. 13. C. praterea Quid jur. si post alien. feud. vas. id recuper. 2. F. 44. c. Imperialis 2. F. 52. c. imperialem 2. F. 55.* which Texts prove all, that no Alienation can be made without the Superiors Consent; and the Laws there do not distinguish betwixt the Consent, whether exprefs, tacite or presum'd: therefore we are not to distinguish; and some of them too, prove that his presence is a tacite Consent, yet without either text or Authority, *Craig p. 340 F.* denys it to be Fewdal Law.

By our Law, the Superiors simple presence at the Alienation saves not against Recognition.

74. By the Fewdal Law, the Notar who, without the Superiors Consent, writes the Instrument of Alienation, loses his right Hand.

By our Law, there is no such thing.

75. By the Fewdal Law (as we have already said) the Vassal cannot Directly or Indirectly alienate any part of the Few.

By our Law, he can do it Indirectly, by contracting much Debt, and for it granting Bonds, upon which the real or pretended Creditor may adjudge the Few.

76. By the Fewdal Law, if the Vassal, in alienating add this Clause, "that the Alienation shall be valid: if the Superior shall after give his Consent; he will not in that case lose his Few.

By our Law, such a Clause, according to the Distinction betwixt a Suspensive and Resolutive Condition,

Condition, mentioned by some of our Lawyers, operates nothing.

77. By the Fewdal Law, there is no difference between Fews, as to their falling in the Superiors hands for Alienation.

By our Law, Recognition takes no place, but in Ward-Holdings.

78. By the Fewdal Law, it is not absolutely necessary, that the Superiors Consent to the Alienation be in Write.

By our Law, it is Essential.

79. By the Fewdal Law, if a Vassal be allowed by the Superior to sell his Few; his next Neighbours have the Priviledge of the first offer, and if they be willing to purchase it, as high as any other Buyer, they will be preferr'd in the Purchase.

By our Law, it is not so; only the Superior should have the first Offer in the Case of Adjudications redeemable, where the Superior may redeem within the Legal, upon payment of the Debts.

80. By the Fewdal Law, no Man is forc'd to part with, or sell his Few, or any part of it.

By our Law, a Vassal may be forc'd to give off some part of it for High-ways and if his Neighbour be building a Park, or Inclosure, he may be forc'd to sell an adjacent corner of his Grounds to him, to perfect it.

81. By the Fewdal Law, If a Vassal deteriorate the Few, he loses it.

By our Law, it hath not been (so far as I know) determined.

82. By the Fewdal Law, as a Vassal loses his Few, if he willingly, without being forc'd by a Judge

Judge, witness against his Superior; so neither can he without incurring the same punishment, be an Advocate against his Superior.

By our Law, it is not so; yet except in Treason the Vassal may not, in a Criminal Affair either accuse, or as an Advocate, plead against his Superior, according to the opinion of some Lawyers.

83. By the Fewdal Law, If a Vassal attempts to debauch the Superiors Widow within Year and Day of his Death, he loses his Few.

By our Law, except he attempt to debauch the Superiors Wife in his own Lifetime, he loses not his Few.

84. By the Fewdal Law, If the Vassal pay not the Canon or Pension agreed upon, at granting the Few for the space of three years, he loses the Few.

By our Law, two years for paying the Canon are only allowed, yet purging by payment before Extract of a Decreet, is allowed.

85. By the Fewdal Law, there is no such thing as Civil Rebellion.

By our Law, a Man, by being put to the Horn becomes civilly Rebel; and if he remain year and day without Relaxation, the profit of his Few during his Life goes to his Superior, which is called his Liferent Escheat.

86. There is no such thing in all the Fewdal Law, as adjudging a Few for the Vassals Debt.

By our Customs, it is an ordinary Remedy.

87. By the Fewdal Law, Parricide is the killing Father, Brother or Brothers Son, or another, that the Murtherer by his Death may sooner succeed to the Few.

By our Law, Parricide is the killing of any Ascendents, or in a Word, Parents only.

88. By the Fewdal Law, the Superiors side is the most favourable, in any Pursuit against the Vassal.

By the Civil Law (to which I think our Custom too agrees) the Defenders side is more favourable.

89. By the Fewdal Law, if the Grand-Father be vested in the Few, his Grand-Children (notwithstanding of any Delinquencies committed by their Fathers) will succeed, he never having been invested in that Few.

By our Law, tho' the Father never was invested, yet the King or Superior for his Delinquencies, will exclude his Descendents from the Few; to which their Father had the hope of succeeding.

90. By the Civil Law, which supplies the Fewdal Law where it is defective, *c. Oberrus in f. 2. F. 1.* If one kill himself, being melancholly and weary of Life; he does not lose his Few, nor are his Goods confiscated: but his Heirs succeed; tho' it is otherwise if he kill himself to evite publick Punishment, being conscious that he is guilty of some Crime.

By our Law, whatever was his Motive, the Self-murderers Goods are confiscated.

91. By the Fewdal Law, the Vassal cannot alienate the Few without the Superiors Consent; To neither can the Superior alienate the direct Property or Superiority of the Few, unless he dispose of the whole Territory.

By our Law, a Superior may quite his Superiority to another, by Interposition even without the Vassals

Vassals Consent; providing always that other hold of the King, and not of any other Superior.

92. *Baldus*, and some other Fewdalists say (I know not indeed from what Text) that a Few granted for Services already done; as the saving one in Battle, or delivering him from Robbers, cannot fall after into the Superiors hands for Ingratitude, because the Obligation still remains.

By our Law, it is not so.

93. By the Fewdal Law, the *Pares Curie* or Vassals of the same Superior in many Cases were Judges.

By our Law, they have no Jurisdiction; but the Superior names Baillies, to judge in Controversies amongst the Vassals; and if any Debate happen between himself and them, the Lords of the Session determine it.

94. By the Fewdal Law, a Pursuer may prove what he asserts by Duelling.

By our Law, the being either Principal or Assistant in a Duell is punishable by Death; for it appears that the acts about authorized Duells are in desuetude.

95. By the Fewdal Law, if a Superior promise to any Man a Few upon Condition, if he be willing to perform his part, and the Superior refuse to implement his, he may use Fire and Sword against the Superior.

By our Law, the Superior must be pursued before the Judge Ordinar.

96. By the Fewdal Law, when a Vassal was les'd by the Sentence of his Superior, he might appeal always to the next.

By our Law, there is no Appeal but before final Sentence: Causes may be advocated from Inferior Judges to the Lords; or if a Decreet have passed, it may be suspended; if the Lords do also Injustice, the Party injur'd may protest for Remeed of Law, which stops not Execution till it be tabled before the House of Lords.

97. By the Fewdal Law, if the Vassal be three times cited to the Superiors Court (seven or ten days intervening betwixt each Citation) and do not compear, he loses the Few.

By our Law, of old, in cases of Recognition and Purpresture the Vassal was four times cited; *First* upon Forty Days, and thrice thereafter upon ten Days each time; But now in all Actions there is one Summonds with two dyets. Citation to the first in ordinary Cases must be given upon One and Twenty Days, if the person cited be within the Kingdom of *Scotland*; or upon Sixty Days if abroad: Citation to the second Diet must be upon six Days, if the person be within the Kingdom; and Fifteen Days if abroad or beneath the Water of *Dee*: but against the Inhabitants of *Edinburgh* it may be upon Twenty Four Hours; however there are some priviledg'd Summonds before the Lords of Session, recited by my Lord *Stair* in his Institutions, *Book 4. tit. 3. §. 33. page 559*. In which, Citation to the first Diet is upon Fifteen Days, and to the second upon Six Days: If persons cited compear not, the Judges in Civil Cases proceed as if they were present in Criminal Cases: the Lords of Justiciary if no Compearance be made, declare the persons contumacious, Fugitives, and outlaws them; except in so far

Betwixt the Fewdal and Scots Law. 109

as the several Statutes have allowed to proceed in
absence against those, who are guilty of High
Treason, that amounts to a Perduellion.

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A SHORT
DICTIONARY
OF THE
Select and Choicest Terms
OF THE
Scots Law;

With such Terms of the *English* Law,
as are found in the *British* ACTS
of PARLIAMENT,

SINCE THE
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Of the two Kingdoms, subjoyned by
way of Appendix to the Treatise
upon the Fewdal Law.

W. S. HOE & CO.

DICTIONARY

OF THE

LANGUAGE OF THE

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OF THE NORTHWEST

WITH A FULL EXPLANATION OF THE
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OF THE TWO NATIONS
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OF THE

A S H O R T
Dictionary

Of the Select and Choicest Terms of
the Scots Law, &c.

A

Absolute Warrandise, is a Warrant against all
Mortals.

Action of abstracted Multures, is an Action
for Multures against those, who are thirl'd
to a Mill, and come not.

Action for poynding of the Ground, is so called, because
it is founded upon some Infeftment for an Annuity
(whether Annualrent, Liferent, or Fee-Duty &c.)
that affects the ground; and the ground being
thus Debtor, its called *Debitum Fundi*, for which
both Moveables found upon the Ground may be
poynded, and these failzeing, the Property affected
by this Servitude, may be apprysed or adjudged,
even in prejudice of intervening singular Successors.

Action against Debtors, is when we pursue several persons for several Debts in the same Lybel.

Action, in the Scots Law, is Prosecution by any Party of their Right, in order to Judicial Determination thereof.

Act before answer, is when the Lords ordain Probation to be led, before they determine the relevancy, and then takes both at once under their consideration.

Act of Curatory, is the Act extracted by the Clerk upon any Bodies acceptance of being Curator.

Adjudication special, is when the Lords of Session, proportionally to the Sums due, adjudge to the Creditor some part of the Debtors lands, with a fifth part more; beside Composition due to the Superior, and Expences for obtaining Infeftment: but if the Debtor do not consent to such an Adjudication, in the Terms of the Act of Parl. 1672; all his Lands and other Heretable Subjects are adjudged in the same manner, as they were formerly apprysed.

Adjudication after the old Form, is when the *Hereditas jacens* (the Heir having renounced) is adjudged to the Creditor for payment of his Money.

Adjudication upon Obligation, is when a Man having obliged himself to infeft another in Lands disposed by him; the Lords adjudges upon his refusal to perform.

Adjournment, is a putting off until another day and place.

Advowson, is in English, a Patron's right to present one to a Benefice.

Affidavit,

Affidavit, signifies to testify a thing upon Oath.

Aid, is variously taken in the *English Law*, sometimes it signifies Assistance, sometimes Subsidy.

Allodial, is that whereby the Right is without Recognition or acknowledgement of a Superior, having a real Right in the thing.

Ann or Annual, is half a years Stipend, over and above what is owing for the Incumbency, due to a Ministers Relict, Bairns, or nearest of Kin after his decease.

Annuities of Teinds, are Ten Shilling out of the Boll of Teind Wheat, Eight Shilling out of the Boll of Beer, Six Shilling out of the Boll of Rye, Oats and Pease allowed to the King yearly out of the Teinds not payed to Bishops, or set apart for other pious Uses.

Answer, in a Suspension is the same with a Reply in ordinary Actions.

Apprysing, is when by Letters a Debtor is charged to appear before a Messenger (who in that case represents the Sheriff) to hear the Lands specified in the Letters apprysed by an Inquest, and declared to belong to the Creditor for payment of his Debts.

Appearand Heir, is any person who has a Right to succeed in an Heretable Subject, but is not actually entered; tho' in the more strict acceptation of the Word, its understood only of Descendents.

Arrestment, is the Command of a Judge, discharging any person, in whose hands the Debtors Moveables are to pay or deliver up the same, till the Creditor, who hath procured the Arrestment to be laid on, be satisfied either by Caution or Payment, according to the respective Grounds of Arrestment.

Arre-

Arrestment upon a Dependance, is upon an Action being raised against a person, when thereupon his Goods are, or may be arrested.

Arreerages, signifies the remainder of an Accompt of a Sum of Money in the hand of the accompter.

Affedation, i. e. Possession by a Tack or Lease &c.

Assignment, is when simply any thing is ceded, yielded and assigned to another; of which Intimation must be made.

Affysers, are those who in an Inquest serves a Man Heir, or judge the Probation in Criminal Causes.

Affythment, is the reparation made for Mutilation and Slaughter.

Affyth the King, is to cause Malefactors pay what Fyne is modified.

Attack, in the *English* Law signifies to take or apprehend by commandment of a Write or Precept.

Attainder, an *English* Term, is when a Man hath committed Fellony, or Treason, and Judgement hath passed upon him.

Attaint, an *English* Term, is a Write that lyes against a Jury, for giving a false Verdict in real or personal Actions.

Attorney, is any person who hath the charge of anothers Business committed to him to manage in Court.

Auditor, is an Office in the Exchequer of him, who takes in the Accompts of these Receivers who collect the Revenues of the Augmentation, as also of the Sheriffs, Escheaters, Collectors and Customers, and set them down and perfect them.

Award, an *English* Term, is properly the Judgement of one that is neither assigned by Law nor appointed.

appointed by the Judges, for ending a Matter in Controversy, but is chosen by the persons themselves that are at variance.

Averment, is an offer of the Defendant, to make good or justify an exception pleaded in Abatement, or barr of the Plaintiffs Action.

Avetting, signifies helping or assisting.

Back-tack-duty, vide *Possession per Constitutum*.

Bails, in our Law signifies Bone-Fires.

Bailis, are Letters to raise Fire and Sword.

Bairns part, is a third of the Defuncts free Moveables; Debts deduced if the Wife survive, and a half (if there be no Relict) due to the Children.

Barratry, is the obtaining Benefices at Rome.

Barre, is a peremptory exception against a Demand or Plaint, sufficient to destroy the Action of the Plaintiff for ever.

Barristers, are people in England skill'd in the Law, who take upon them the Protection and Defence of Clients and plead at the Bar, they answer to what is call'd abroad *Licentiatu in jure*.

Base Infeftment, is when the Vassal disposes Lands to be holden of himself.

Behaving as Heir, is the same as *Gestio pro Herede* in the Civil Law.

Benefit of Discussion, is that whereby the antecedent Heir, such as the Heir of Line, in a pursuit against the Heir of Tailzie, &c. must be first pursued to fulfil the Defuncts Deeds, and pay his Debts: This Benefit is likewise competent in many cases to Cautioners.

Bigamy,

Bigamy, is the having plurality of Wives.

Bill, signifies either a single Bond, without any condition, or it signifies a written Complaint given in to Judges.

Black-ward, is when a Vassal holds ward of the King, and a Sub-Vassal holds ward of that Vassal.

Blank-Bond, is equivalent to an Assignment, and must be intimated.

Blench-Holding, is whereby the Vassal is to pay an allusory Duty, meerly for acknowledgement as a penny.

Book of Responses, is that which the Director of the Chancery, keeps particularly to note a Seafine, when he gives order to the Sheriff in that part to give it to an Heir, whose Service has been returned to him; the form of it is *respondet Vice-comes &c.*

Borgh upon weir of Law, is to find Caution to answer as Law will.

Breaking of Arrestment, is an Action wherein it is narrated, that tho' Arrestment was laid on, payment nevertheless was made; the Pursuer therefore concludes, that the Breaker shou'd re-found him, and beside shou'd be punished according to Law.

Breifs in general, are all Forms of Summonds passing the Signet, which containing much in little room, are called *Breife*, according to the old Custom now obsolete.

Breife out of the Chancery, is a Write or Command from the King to a Judge, to examine by an Inquest, whether a Man be nearest Heir.

Breife

Breif of Distress, is a Writ out of the Chancery, after Decreet obtained against any Land-Lord to distress his readiest Goods, according to the old Custom, now obsolete.

Breif of Mortmainstry, is that which is used for entering all Heirs of Defuncts.

Burgage-Holding, is the Dutie that Burghs Royal pay to the King.

Burglary, an *English* Term, is a felonious entering into another Mans Dwelling, wherein some person is, or into a Church in the Night-time to commit Theft, Murder, or some other Felony.

Burrows or *Burgh*, by our ancient Stile, signifies Caution.

Buy, Their life as common Oppressors: *Mackenzie* in his Observations on the Acts of Parliament explains to be, their being obliged to take Remissions, as for Capital Crimes.

Canon, is the Few-dutie payed to the Superior.

Casualty of Wards, are the Mails and Duties, due to the Superiors in Ward-Holdings.

Certification, i. e. Assurance.

Certification, is when the Judge doth ascertain the Party called, and not compearing, what he will do in that case.

Challenge, in a Legal Sense, signifies an exception taken, either against Persons or Things.

Chaplain of the Nation, hath two Significations, *First*, by it is meant the Kings Almoner, who hath

the care of the Poor; also the Director of the Chancellery is call'd so.

Charter, is a Disposition to a Few.

Charge, i. e. Decreet or Sentence.

Chattels, are all moveable Goods.

Circumvention, is any Act of Fraud, whereby a person is induc'd to a Deed by Decreet.

Citation, a *citando*, is the Execution done upon the Summons.

Clause irritant, is any Provision which makes a Penalty be incurred, and the Obligation to be null for the future; or upon any other account, makes the Right to vacat or resolve.

Clause Resolutive, is a Provision, whereby the Contract, to which it is affixed, is for not performance declared to have been null from the beginning.

Clerk of the Pipe, is an Officer of Exchequer, who having all Accompts and Debts due to the Queen, delivered and drawn out of the Remembrancers Office, charges them down into the Great Roll: who also writes Summons to the Sheriff, to Levy the said Debts upon the Goods and Chattels of the Debtors; and if they have no Goods, then doth he draw them down to the Lord Thesaurers Remembrancer, to write Escheats against the Lands. He hath the drawing and ingrossing of all Leases of the Kings Lands.

Co-Executors, is when there are several nominate.

Collusion, is when a Debitor concurs with one Creditor, in opposition to the other, that he may first compleat his Diligence.

Commendators, are secular persons, upon whom Ecclesiastick Benefices are bestowed, call'd so, because the Benefices were commended and intrusted to their Oversight, they are not Proprietars, but only Trustees or Tutors.

Commission, is taken for the Warrant or Letters patent, that all Men, exercising Jurisdiction either ordinary or extraordinary, have for their power to hear or determine any Cause or Action.

Commission of Oyer and Terminer, an English Term, is a Commission especially granted to some eminent persons of the Hearing and Determining one or more Causes; and it is the first and largest of the five Commissions, by which the English Judges of Assize do sit in their several Circuits.

Commissioners for valuation of Teinds, are these appointed by the Parliament to value Teinds.

Common Pasturage, is a Right of pasturing the Goods and Cattel of the Dominant Tenement, upon the Ground of the Servient.

Cognition, is the Process, whereby Molestation is determined.

Comptroller, is one who observes and examines the Accompts of Collectors of publick Money.

Comperoller of the Pipe, is an Officer of the Exchequer, that writeth out Summons twice every year to the Sheriffs, to levy the Farms and Debts of the Pipe, and also keepeth a Contra-rollment of the Pipe.

Condition, in the English Law, is a Restraint or Bridle annexed to a thing; so that by the not performance, the Party to it shall receive prejudice.

judice and loss, and by the Performance Commodity and Advantage.

Confirmation, is when the Superior confirms the Right formerly granted.

Confirmation also is, *additio Benedictionis in immobilibus*.

Conjunct Fiers, is when several people are conjunctly infect, or otherways have a Joint-Dee.

Contravention, is the Action founded on the breach of Law-burrows.

Constables, are Officers nam'd by the Justices, to wait upon them, receive Injunctions, and de-late Riots.

Courts of Guerra, were Courts holden upon Neighbour-Feud and Riots.

Courtesie, is a Right the Husband has to all his Wifes Lands, being Heretrix, during his Life: after her Death, if there be a Child of the Marriage, who was heard cry.

Culbreath, is the Caution given by a Lord of Regality to punish a Malefactor, whom he repledges from the Sheriff.

D

Deads-part, is the Remainder of the Defuncts Moveables, beside what is due to the Wife and Children.

Deceit, is a subtle weilly Shift or Devise, having no other name.

Declaration, is a shewing in Writing the grief or complaint of the Demandant, or Plaintiff against the Defendant or Tenant; wherein he is supposed to have received some wrong.

Decla-

Declarator, is an Action, whereby we crave something to be declared in our favours.

Declarator of Property, is when the Complainer narrating his Right to Lands, desires he should be declared sole Proprietar, and all others discharged to molest him any way.

Declarator of Redemption, is when after a Process before the Lords against the Wadsetter, who refuses to renounce after the order of Redemption is used, the Lords force him to renounce, and by a Decreet declare the Lands redeemed.

Declaratory Actions, are these wherein the Right of the Pursuer is craved to be declared; but nothing claimed to be done by the Defender.

Decreet cognitionis causae, is when the apparent Heir is called to hear the Debt constitute, it not being already clearly constitute by write; & the apparent Heir renounces, being charged to enter Heir.

Decreet cognitionis causa, against Executors, is when the nearest of Kin are pursued by the Executor Creditor, who hath no Writ to instruct his Debt to hear the Debt constitute.

Decreet of Comprising, is when at the day appointed in the Letters, the Debitor being called, the Messenger offers him his Lands for the Money; which if he have not ready, the Inquest declares the Lands to belong to the Creditor, for his payment.

Decreet of Exoneration, is a Decreet of the Commissars against the Creditors or nearest of Kin; wherein it is proven, that the Executor hath executed the whole Testament, and that all is exhausted by lawful Sentences.

Decreet of Locality, is a Decreet modifying a Stipend for a Minister, dividing and proportioning the same among the Heretors.

Decreet of Modification, is that which modifies a Stipend to a Minister, but doth not divide and proportion it among the Heretors.

Decreet of Valuation, is a Sentence of the Lords (who are now in the place of the Commission) determining the extent and value of Teinds,

Demease, signifies Death.

Demurrer, signifies a pause, upon a Point of Difficulty in any Action.

De novo damus, is a Clause of a Charter, which is in effect, an Original Charter.

Diligence of Executors, is a Sentence and Registering Horning against the Defuncts Debtors, on the part of the Executor, to recover Debts due to the Defunct.

Disclamation, is when the Vassal loses his Few, for denying his Superior.

Disposition, is a Writ disposing Lands, or other immoveable Rights, containing a Precept of Seafine and Procuratory of Resignation: there may likewise be a Disposition of Moveables.

Dispositive Clause, is that Clause of a Charter, which contains the Lands disposed.

Disseiser, signifies an unlawful dispossessing a Man of his Land Tenement, or other immoveable or incorporeal Right.

Distrain, signifies to distress, also to take and keep any thing in custody.

Distrainzie any person, is to pursue them in the ordinary way.

Distress,

Distress, signifies a Compulsion, in certain real Actions, whereby to bring a Man to appear in Court, to pay a Debt of Dutie denyed.

Distresses, were Pledges taken by the Sheriff from those who came to Fairs, for their good Behaviour; which at the end of the Fair or Market were delivered back, if no harm was done.

Distingas, is a Writ directed to the Sheriff, or any other Officer, commanding him to distrain one for Debt to the King.

Double avail of Marriage, is the double of the value of the Vassals Wifes tocher, due to the Superior; because he refused a Wife equal to him, when offered by the Superior: but this is modified to three years Rent of the Vassals free Estate.

Dry Multures, are Quantities of Corn payed to the Mill; whether the payers grind or not.

E

Earnest, is something given, as a Mark of agreement in Contracts.

Effeyers, alias *Affeyers*, are, in the Law of England, such as are appointed in Court Leets upon Oath, to set the Fines on such as have committed Faults arbitrarily punishable, and have no express Penalty appointed by the Statute.

Entries, an English Term, are the taking of Possession of Lands or Tenements.

Erection, is when Lands are not only unite in one Tenement;

Tenement, but are erected into a Barony, which comprehends Lordship, Earldome, &c.

Error, signifies any oversight in pleading.

Escheator, is, in the English Law, an Officer of a Countie, that taketh notice of the Escheats that fall to the King, and certifies them to the Exchequer.

Essonzie, signifies an Excuse.

Exchequer, is, the Kings Chamberlain Court.

Exactor, is *Flaras in mobilibus*.

Executor-Creditor, is when a Creditor confirms himself Executor, and so pursues the Defuncts Debtors.

Executor nominate, is he who is nam'd by the Defunct in his Testament.

Execution, in the common Law of England, signifies the last performance of an Act, as of a Fine, or a Judgement.

Exhibitions, are Actions craving a Writ or thing to be exhibite.

Extent, signifies a Writ or Commission to the Sheriff, for the valuing of Lands and Tenements; sometimes it signifies the value it self.

Extortion, is any Act of Force, or other Mean of fear; whereby a person is compelled to do what otherways he had no Inclination to.

Falsing of Dooms, is when people get wrong before any Inferiour Court, according to the old Custom.

Fee-Farm, an English Term, signifies Land held of another in Fee; that is to himself and his Heirs for

so much yearly Rent; which Canon or Rent is called *Fee-farm-rent*.

Fellony, is any capital Offence, in degree next to petty Treason.

Few, is a free and gratuitous Right to Lands, made to one for service to be performed by him, according to the proper nature thereof.

Few-holding, is whereby the Vassal is obliged to pay to the Superior, a Sum of Money yearly.

Few-annuals, is that which is due by the *Reddendo* of the Property of the Ground, before the House was built within Burgh.

Forprising, in England, signifies taking more than the price for any thing.

Forspeakers for Cost, are Advocats who plead before the Parliament, called *for cost*, to distinguish them from those who plead for nothing, as Freinds and Relations, who were term'd, Prolocutors.

Fray, is properly a Sedition or Tumult.

Furthcoming, is an action, wherein the Arrester libells, that having raised Letters of Arrestment, he caused arrest all Debts, owing by the Defender to his Debitor, to remain under Arrestment, and to be made furthcoming to him; and therefore concludes, the Defender should be decerned.

General Breif, is that which hath two Heads, viz. If the Defunct dyed at the Kings peace, and If the Raifer of the Breif be the next Heir.

General Declarator of Nonentry, is a Decreet of Declaration, decerning bygone Duties, to belong to the Superior, because of Nonentry.

General Heir, is he who succeeds universally to the Defunct, by a general Service.

General Service, is where a person is cognosc'd Heir, without respect to any particular Land; in which Infeftment had followed.

Grant, signifies a Gift in Writing, of such a thing as cannot aptly be passed and conveyed by word only, as Rent, Reversions, &c.

Ground-Annual, is distinct from Few-Annual, and is constitute upon the Ground, before the Tenement in a Burgh was built.

H

Hamesucken, is assaulting or beating a Man in his own House.

Hamlet, an *English* Term, signifying a Habitation, or the Seat of a Free-holder.

Heir, is he who succeeds universally, in all that belonged to the Defunct.

Heir Active, is he who served Heir, and may pursue.

Heir of Conquest, is he who succeeds to the Defunct in Lands, and other Heretable Rights; to which the Defunct did not himself succeed, as Heir to his Predecessors; as when a Father leaves to his second Son his Estate.

Heir of Line, is he who succeeds lineally, by right of Blood.

Heir Male, is the nearest Male Heir who can succeed.

Heir Passive, is he whom the Law makes lyable to be Heir.

Heirs Portioners, is when Women succeed: in that case they have all equal portion.

Heirs of Provision, are those who succeed by virtue of a particular Provision in the Infeftment, or in any other Writ; such as Heirs of a second Marriage.

Heir of Tailzie, is he to whom an Estate is tailzied; so called, because the legal Succession is cut off in his favours.

Heirs whatsoever, are those who would succeed to any Heretable Right according to Law; or in a word, they are the Lineal Heirs.

Heirship Moveables, are the best of each kind of Moveables.

Heretable Rights, in a strict sense are only Lands; but in a legal Sense, it is all that falls to the Heir.

Herezelds, are the best Horse, or Cow of the Tenant dying upon the Ground, due to the Master as a Gratuity; tho' not exprest in the Infeftment.

Homologation, is when a Man, either by exprest or tacite Consent, ratifies a Deed that formerly was null or invalid.

Hundred, is a part of a Shire, properly so called, because it contains ten Tithings, or because at first there were a hundreth Families in each Hundred, or else a part which found the King 3 hundred able Men for his Wars.

Husbands, beside its other significations, this word in the Acts of Parliament, is taken for Farmers and Tenants.

I

Jeofails, in a legal Sense, denotes an oversight in pleading.

Implead, signifies to sue, arrest, or prosecute by course of Law.

Improbation, is an action, whereby we pursue Papers to be declared false and forged.

Incident Diligence, is a Diligence granted before *Litis Contestation* in Improbations, for the recovery of Writs craved to be produced, and in many other cases, during the dependance of the principal Process.

Infesment, signifies the Right constitute of a Fee, *alias Investiture*, which signifies the Writs which are Evidents, signifying the Acts constitute in the Fee.

Infesment of Annualrent, is when a Vassal is not infest in the Property of particular Lands, but is Infest in an yearly Annuity of Money, to be payed out of the Lands.

Infesment a me de Superiore meo, vide *Publick Infesment*.

Infesment de me & Successoribus meis, vide *Base Infesments*.

Infesment of Rent, is when the Creditor, not relying on the personal Security of the Borrower, causes Infest him in as much Rent out of the Debtors Lands yearly, as the Annualrent of his Sum amounts to.

Infest-

Infestment of Releif, is an Infestment, granted by the Debtor to his Creditor for Security of Sums owing to him, which he must not take Possession of, till he be distressed, in case he be distress'd as Cautioner.

Infestment simple, is that which is taken to Heirs whatsoever; to which tailzied Infestment is opposite.

Inhibition, is a personal Prohibition, by Letters under the Signet, discharging the Party inhibited to sell or dilapidate any way his Lands, in prejudice of the Debt due to the Raifer of the Inhibition.

Inhibition upon Teinds, is when the Titular forbids the Tacks-man to have any more to do with the Teinds.

Inquisition, is a manner of proceeding in Matters Criminal, by the office of the Judge, or by the Inquest before the Justices in Eyre.

Instance, is that which may be insisted in, at one diet or course of Probation.

Instruments, in a Process are Writs, Testimonies, Oaths of Parties, Witnesses, &c.

Instrument of Premonition, is an Instrument taken by the Granter of the Wadset, when he uses an order of Redemption.

Instrument of Resignation, is an Instrument taken by the person, in whose favours the Resignation is made.

Insucken Multures, is the quantity of Corn payed by those, who are thirled, to a Mill.

Interruption, is when, during the course of Prescription, the true Proprietar owns his Right.

Intrusion, is (without any Warrant or Right) the taking of Possession; tho' without violence.

Ish, is the Term of ending a Tack.

Issue, are profits growing from Amerciaments or Fines.

Judgement, is the censure of the Judges, so called, and is the very Voice and final Doom of the Law; and therefore is always taken for unquestionable truth.

Jury, signifies a certain number of so many sworn Men, appointed to enquire into a matter of Fact.

Jus Mariti, is the Right a Husband hath to administer, during the Marriage, his Wifes Goods, and the Rents of her Heritage.

Jus Relictæ, is the Right a Wife hath after her Husbonds Death, to a Third of the Moveables, if there be Children; and one half if there be none.

Justices of Peace, are those appointed by the Privy Council or King, to advert to the keeping of the Peace.

K

Kings Case, is, as King Charles the 1st. determined it, a fifth part of the Teinds, after Valuation given down to the Heretor.

Kings Silver, is, properly in the *English* Law, that money due to the King in the Court of common Pleas, *pro Licentia concordandi*, in respect of a Licence then granted to any Man for passing a Fine,

Kinrick,

Kinrick, i. e. Reign; sometimes it signifies Kingdom.

Knave-ship-Lock and Bannock, are a small quantity, payed the Servants for their pains in Mills.

L

Lathes, an English Term, signifies a great part of a Countie, sometimes containing three or more Hundreds.

Law-borrows, is a Caution found, to do nothing but by order or Law.

Lawful Administrator, is the Father who hath the management of the Sons affairs, during the Sons Minority; as also, the Husband is legal Administrator for his Wife.

Lease, is a letting of Lands or Tenements to another, for Term of Years or Life.

Legal Reversion, is the Term of ten years by the Act of Parliament 1661, allowed by the Debtor to redeem his Lands, after the Decreet of Comprising.

Legal Reversion in Adjudications, is when the Creditors, or a Minor having renounced to be Heir, are allowed to redeem the *Hereditas jacens*, that was adjudged within seven years.

Letters in general, are Writs authorizing any thing to be done.

Letters of Advocation, are when the Lords of Session, at the instance of an Party injured, before an Inferiour Judge, calls the Cause before themselves.

Letters conform, are those form'd according to the Tenor of a Decreet, to put it in execution granted by the Lords to Ecclesiasticks, posselt of a spiritual Benefice.

Letters of Ejection, is when the Sheriff is charged to eject, put out the fire, and cast out the plennishing of him, who, after a Decreet of Removal, is denounced Rebel for not removing.

Letters of Exculpation, are those allowed to the Defender in Criminal Processes, to adduce Adwitnesses to exculpat himself.

Letters of Fire and Sword, is when the Privy Council commissionates the Sheriff, by all manner of Force to dispossess him, who in spite of all Law, after he is legally ejected, continues to possess.

Letters of Publication, are when the Lords of Session *proprio motu*, or upon a voluntar Bond; whereby a Prodigal obliges himself to do nothing without the consent of such or such Friends Interdictors, as to his Heritage, give order to publish the Interdictment, at the Mercat-Cross of the head Burgh of the Shire, where the person interdicted lives, or at such other Mercat-Crosses, as the Laws concerning the same do appoint.

Letters of Regress, are whereby the Superior when a Wadset is given to be holden of him, obliges himself to receive back his Vassal, when he shall redeem his own Lands.

Letters of slaines, are Writs or Evidents of persons injur'd, or of the nearest Freinds of a person murdered, testifying that they are now satisfied, and that they forgive, and pass from any Offence

Offence done them or their Friends, by the Offender or guilty person.

Liferent Escheat, is a Right which the Superior hath to the Mails and Duties of the Few, during the Vassals Life, who had continued year and day Rebel, without relaxing himself, and so is reckon'd civilly dead.

Litis-contestation, in our Law, is an Act for Probation after the Competency and Relevancy is discuss'd.

Lords of Regality, are those who have their Lands, of which they are Superiors or Heretors, erected with Criminal Jurisdiction equal to the Justices, and civil to the Sheriffs.

Loosing and Loosing, signifies loading and unloading.

Lucrative Cause, is when any thing is granted for Love and Favour.

M

Maines, i. e. Dominical Lands.

Manprize, in the English Law, signifies the taking or receiving a Man into friendly custody, that otherways is or might be committed to Prison, upon Security given for his furthcoming at a day assigned.

Manrent, is a kind of bondage, whereby free persons become Bond-men, or Followers of those who were their Patrons and Defenders.

Mensal-kirks, is where the Prelate has a Right to the Fruits, because it is his proper Patrimony, and the Incumbent hath but a Stipend.

Messuage, in Scotland signifies the principal Dwelling-house in any Barony in England: it is properly a Dwelling-house, with some adjacent Land assigned to the use thereof; it may also comprehend a Garden or Orch-yard, a Dove-house, a Shop, a Mill, a Chamber, a Cellar, and a Cottage.

Misprison, signifies in the English Law, any neglect or oversight.

Misprison of Felony and Treason, is, in the English Law, the not revealing or disclosing any known Felony or Treason.

Molestation, is the same with *Actio Finium regundorum* in the Civil Law, but chiefly in *Possessorio Morgagium*, is what we call a Wadset.

Mortification, is when Lands are left to pious Uses.

Multiple-poinding, is a Summons wherein the Complainer narrates, that he is troubled by such and such persons, who each of them pretend a Right to a Sum, Land or other Subject, in which he is lyable, and concludes that they shou'd compear to hear and see the same tryed, and who hath preferable Right declared; and all others discharged to trouble him thereafter.

Multures, are a quantity of Corn payable to the Heretor of the Mill for grinding.

Muzzling of Women, is the same with Womens being masked.

Mutilation, is the disabling of a Member.

N

Necessar Intromission, is when a Husband or Wife continues in Possession of one anothers Goods, after one anothers Decease for Preservation

Nisi-prius, is a Writ judicial, which lyeth in case where the Jury is impanalled and returned before the Justices, the one Party or the other, requesting to have this Writ for the case of the Country, whereby the Sheriff is willing to cause the Inquest to come before the Justices in the same County at their coming.

Non-entry, is a Casualty due to the Superior of all the Mails and Duties of the Few before the Vassal be actually entered into the Lands.

Nonsuit, is a renouncing of the Suit by the Plaintiff, or Demandant.

Novalia, is a Land newly plowed, which had not been so before out of the memory of Man.

O

Obreption, is when a Gift is obtained of the King, by expressing something that is false.

Ochiern, is the cheif of a Branch of a great Family.

Official, signifies the Bishops Judge.

Onerous Cause, is when any things are granted for Price and Good-deeds.

Order of Redemption, is when the Wadsetter cites the Buyer to compear to receive payment of the Sums due to him.

Original Charter, is, that which is granted first to the Vassal by the Superior.

Out-horns, are people who followed the Sheriff, whose office it was, to raise the Kings Horn, for warning the Country to assist the Kings Officers.

Out-lawry, is the loss of the Benefit of a Subject, that is, of the Queens Protection, and is a punishment for such as being called into Law, and lawfully sought, do contemptuously refuse to appear.

Out-sucken Multures, are quantities of Corn payed by those, who came voluntarily, and are not thirled to the Mill

Over-Lord, is the same with a Superior.

P

Patents, are Letters or Writings seal'd with the Great Seal, whereby a Man is authorized to do, or enjoy any thing, that otherways of himself he could not.

Personal Warrandice, is when the Disponer of Lands is bound personally.

Parsonage Teinds, are these due to the Parson, or the Teinds of Corns.

Pettie Treason, is a lower sort of Treason.

Pipe, is a Roll in the Exchecquer, otherways called the Great Roll.

Plea, is an Action, and all that is done upon it till the Parties fully acquiesce, and insist no further.

Plea, in the English Law, signifies that which either Party alledges for himself in Court.

Pleadable

Pleasable Breifs, are Precepts directed to Sheriffs, who thereupon cite Parties, and hear and determine; and this Citation must be particular, according to the old Custom.

Poll-money, in *England*, was a Tax whereby every Subject was assess'd by the head, or Poll according to his degree.

Possession per constitutum, is when Wadset Lands are set back again to the Disponer, for a certain Dutie called *Back-tack-dutie*.

Poundage, is a Subsidy to the value of Twelve Pence of the Pound, granted to the King of all manner of Merchandize of every Merchant, as well Denison as Alien, either Exported or Imported.

Poynding, is a judicial Sentence, whereby the Messenger who is constitute Judge, takes the Moveables, apprises them at the Mercat-Cross of the cheif Burgh, and transferrs the Property of them to the Creditor.

Precept, is the same with Mandation, or an Order or Command.

Precept of clare constat, is when the Superior gives a Precept of Seaisine, because he says, it is known to him, that such a Man is Heir to his Father or other Predecessor.

Precept of Seaisine, is the Superiors Command in the Charter to his Baillie or Atorney, to give actual State and Seaisine to the Vassal.

Premonition, vide *Requisition*.

Premunire, in *England*, is either taken for a Writ so called, or for the Offence, whereupon the Writ is granted: There are several Crimes in diverse Statutes, called *Premunire's*.

Privy Seal, in *England*, is a Seal that the King uses to such Grants, or other things as pass the Great Seal. First, They pass the Privy Signet, then the Privy Seal, and lastly, the Great Seal of *England*.

Privileged Debts, are Servants Fees, Medicaments on Death-bed, Horse-mail, and Funeral Expenses.

Privileged Summons, are those that require a Bill to be passed by the Lords, and bears *ex deliberatione Dominorum*.

Process, is an Action sustained by a Judge, that thereupon an Act or Definitive Sentence may follow; yet vulgarly any Summons, when but call'd by a Clerk and appointed to be seen, is called a Process.

Procurator, is he that gathereth the Fruits of a Benefice for another Man.

Procurations, are certain Sums of Money, which Parish Priests pay yearly to the Bishop or Arch-Dean, *ratione Visitationis*.

Procuratory of Resignation, is when a blank person gets a Commission from a Vassal the Seller, to resign the Fee in the Superiors hands.

Pro Licentia concordandi, see *Kings Silver*.

Prorogue, is the same way defin'd as Adjournment, with this difference only, that when the Parliament is prorogu'd by the Prorogation in open Court, there is a Session, and then such Bills as passed in either House, or both Houses and had not the Royal Assent to them, must at the next Assembly begin again; for every Session of Parliament is in Law a several Parliament, but if it be but adjourn'd or continued, then is there no Session; and consequently all things continue

P

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nue in the same State they were in before the Adjournment.

Publick Infestment, is when Lands are disponed to be holden of the Disponers Superiors.

Purloin, signifies to steal.

Purpresture or Purprison, is the Vassals going without his Bounds, and incroaching upon the Property of his Superior.

Q

Qualified Oath, is when the Deponer swears not simply, but circumstantially.

Quare impedit, is a Writ that lyes for him that has purchas'd a Manour with an Advouson thereto belonging against him that disturbs him in the Right of his Advouson, by presenting a Clerk thereto, when the Church is void.

Queens Remembrancer, is an Officer of Exchequer, who enters in his Office all Recognizances taken before the Barons for any of the Kings Debts for Appearances, or for observing of Orders, he takes Bonds for the Kings Debts, he writes Procefs against the Collectors of Customs for their Accompts: All Informations upon Penal Statutes are entered in his Office, he makes Bills of Compositions upon Penal Laws, and he, as well as other Remembrancers, are stil'd *Rememoratores Scaccarii*.

Quietus, is a word used by the Clerk of the Pipe, and Auditors in the Exchequer in their Acquittances, or Discharges given to Accomptants.

Rape

R

Rape, is a Felony committed by a Man in the violent deflouring of a Woman against her Will.

Real Warrantice, is when Infeftment of an Tenement is given in Security of another.

Recognizance, in the *English* Law, is a Bond or Obligation of Record, testifying the Recognisor to owe to the Recognize a certain Sum of Money, and is acknowledged in some Court of Record, or before some Judge, Master of the Chancery, or Justice of Peace.

Recognition, is when the Lands fall to to the Superior, because of the Ingratitude of the Vassal, in disposing the half of Waird Lands, without the Consent of the Superior.

Record, signifies an authentick and uncontrollable Testimony in writing, contained in Rolls of Parchment, and preserved in Courts of Record.

Reddendo, is the Clause of a Charter, which expresses what Duty the Vassal is to pay to the Superior.

Redeemable Rights, are those which return to the Disposer, upon payment of the Sum, for which those Rights are granted.

Reduction, is an Action, whereby we pursue a Right to be declared null, and to be reduc'd.

Regalia, are what belong to the King in an eminent degree, and are never presum'd to be granted, but require a special Disposition, except what follows the Disposition of a Barony, which is *Nomen universitatis*.

Regress,

Regress, is an Obligation of a Superior to receive back his Vassal, after Redemption of his Lands wadsetted.

Relaxation, is Letters under the Kings Signet, ordering any Man to be relaxed from his Rebellion.

Release, in general is to acquit, but more specially, it is an Instrument, whereby Estates, Rights, Titles, Actions, and other things are sometimes extinguished, sometimes transferr'd, sometimes abridged, and sometimes enlarged, and it is a Term of the *English* Laws.

Relief, is when the Heir relieves the Executor of all heretable Debts, and the Executor relieves him of all moveable Debts.

Relief, is also a Duty payed to the Superior when the Vassal enters, and it extends to the double of the Few, and Blanch-duties in these Holdings, in Ward-holdings to the full Duty of the Lands; but if the Superior was not in Possession the time of the Vassals Entry, he gets only the re-tour'd Dutie.

Relief, in the *English* Law, signifies a certain Sum of Money, which the Tenant holding by Knights Service, or other Tenors; for which Homage or Legal Services is due, payed by him, who is at full age, at the Death of his Ancestor unto his Lord, at his Entrance.

Relief of Cautioners, is much the same with *Beneficium cedendarum Actionum*, and *Actio* or *Exceptio ex mandato*.

Relevancy, is to releive and help; so a thing is relevant when proven, it relieves or gives a Remedy, as due in Justice to the Pursuer.

Remission, is a Pardon (in which is express'd the highest Crimes) from the King, and pass'd under the Great Seal; the taking of which, is a confessing the fault.

Rentals, are a sort of Tacks in Writ; given to ancient Possessors, and kindly Tenants, who at their Entry, pay an Acknowledgement; they last a year, or if granted to a Man or his Heirs, they continue till the next Heir.

Rental'd Teind Bolls, is when the Teinds have been liquidate, and settled for so many Bolls yearly by Rental, or old use of payment.

Reprobatur, is an Action craving a Decreet (pronounced upon a Disposition of Witnesses, who have depon'd unjustly) to be reduc'd.

Reprobatur, is also the refusing such and such Witnesses, for their inhability.

Repositions, or *Retrocessions*, are the returning back of the Right, assign'd from the Assigney to the Cedent.

Requisition, is when conform to the Tenor of the Reversion, the Wadsetter is required to come himself to the place of Consignation and receive his Money.

Resignation, is when Lands are resign'd in the Superiors hands, for new Infeftment.

Resignatio ad remanentiam, is when Lands are disposed to remain with the Superior.

Resignatio ad favorem, is when the Seller having sold his Fee to a third person, resigns it into the hands of the Superior, for new Infeftment.

Responde, is a Book of Chancellery drawn off the Precepts of Seafine, to all Heirs mentioning Sheriffs, to compt to the Exchequer for the Sums, which

which by the Precepts of *Seafine* directed to them, they are ordered to take Security for.

Restitution, is when the King restores a Man against a Forefaulture.

Retoured Durie, is the Valuation, both new and old, of Lands, exprest in the Retour to the Chancery, when any is returned, or served Heir.

Return, signifies when Writs are returned by Sheriffs, and Baillies, certifying the Court, of what they have done, touching the Execution of any Writ directed to them.

Reversion, is when the Buyer of a Wadset obliges himself upon payment, of the Sum then delivered and of the Annualrent thereof, to restore to the Wadsetter the Wadset.

Ridings, an *English* Term, signifies certain Divisions of Shires, used principally in *York-Shire*.

Right of Progress, is when a Superior renews a Right or Charter.

Right by Representation, is that whereby Descendents still exclude the Collaterals.

Routs, an *English* Term, are Companys of Persons, three or more, going forcibly to commit an unlawful Act, though they do it not.

Scire-facias, in the *English* Law, is a Writ judicial; most commonly to call a Man to shew cause to the Court, whence it issues, why Execution of a Judgement passed, should not be made out.

Seafine, is the delivery of Earth and Stone, or other proper Symbols, with a design! to transfer a Right to Lands.

Serjeant at Law, is the highest degree of the Law in England, just answering to what is abroad called, the Doctor of the Civil and Canon Law.

Serplaiths, is eighty Stone Weight of Goods.

Servitudes, are Burdens affecting Property and Rights.

Sheriff, is the Kings chief Officer commisionate under the Great Seal to preserve the Peace, and put the Laws in Execution: he hath a Criminal and Civil Jurisdiction.

Sheriff-Fee, is an allowance of the Twenty Penny of the Sum, that was comprised for.

Signatures, are Rights written by Writers to the Signet, super-signed by the King.

Signet, in the English Law, is one of the Kings Seals, wherewith his private Letters are sealed.

Simple Destination, is when a Proprietar in his Failzie or other Writ, substitutes the persons who are to succeed one to another.

Simple Warrantice, is an Obligation to warrant or secure from all subsequent or future Deeds of the Granter.

Single Avail of Marriage, is the value of the Tocher of the Vassals Wife, which is modified to two years Rent of the Vassals free Estate.

Single Escheat, is when all a Mans Moveables falls to the King as a Casualty, because of his being declared Rebel and put to the Horn.

Sojourn Horse, is to quarter Horse.

Scorners, are such as masterfully take Meat and Drink from the Kings people without Payment.

Souming and Rooming, is the determining the Proportion of Goods belonging to each Dominant Tenement, by assigning them particular Rooms, according to their respective Rents.

Speaker

Speaker of the Parliament, is an Officer in that high Court, who is as it were the common Mouth of the rest: There are two, the Lord Chancellor or Keeper: If there be no Chancellor who is Speaker to the House of Peers, the other is a Member of the House of Commons, chosen by them to be their Speaker, and presented to the King or Queen by them.

Special Brief, is what consists of seven Heads. 1^{ma}. When the Defunct died. 2^{da}. If he died Vest, and at the Kings peace. 3^{tio}. That the Raifer is next Heir. 4^{to}. Of whom he holds the Lands, *in capite*, 5^{to}. By what manner of holding. 6^{to}. What is their old and new Extent. 7^{imo}. Whether the Raifer be of lawful Age, and in whose hands the Lands are at present.

Special Declarator of Non-entry, is the Declaration of the whole Mails and Duties being due to the Superior, from the date of the Citation upon the Summons, whereupon the general Declarator proceeded.

Special Legacy, is when any particular thing is left to a Man in Testament.

Special Service, is when a Man is served Heir to any particular Lands.

Speciality, is a Bond, Bill or such like Instrument; and sometimes it signifies a particular Acquaintance.

Spulzie, is the taking away, or meddling with Moveables in anothers Possession.

Statutory Treason, is what we have from Statute, and not from Common Law.

Stellionate, is the making of Double Rights

Seck-haw Goods, are Goods which the Master sets to the Tenant, with his ground to be restored after the ending of the Tack, either in *Specie* or *generis*.

Stenars, is the Kings Sheriff, within the Kings own proper Lands.

Sub-pœna, is a Writ whereby all persons under the Degree of Peerage are called into Chancery; in such case only where the Common Law fails, and hath made no Provision; so as the Party who in Equity hath wrong, can have no ordinary Remedy by the Rules and Course of the Common Law: It is called *Sub-pœna* from the Words in the Writ, which Charge the Parties summoned to appear at the day and place assigned under a certain Penalty.

Sabreption, is a Gift obtained from the King, by concealing what is true.

Subsumption, is the Minor Proposition.

Sub-Vassal, is he who holds his Lands, not directly of the Superior, but of the Superiors immediate Vassal.

Succesor Titulo lucrativo, is where the Appearand Heir; to preclude the necessity of entering Heir, gets a Disposition from whom he would have been Heir, without any onerous Cause.

Suit, signifies a following, or pursuing in Law, or any otherways.

Summons, *Summonendo*, it's whereby the Defenders are cited to appear and answer.

Summons of Contravention of Law-burrows, is when the Pursuer narrates, that *A.* became Cautioner to *B.* that the Complainer and all belonging to him, should in all manner be skaithless, and that not-

S

notwithstanding the said Caution was broke, and therefore concludes that the Penalty incurred should be payed.

Summonds of Error, is when a Pursuer craves a Service to be reduc'd, because he is a nearer Relation, than he who was erroneously served Heir to the Defunct by an Inquest.

Summonds of Molestation, is that which the Possessor raises, concluding that people should desist from molesting him in the peaceable Possession of his Lands.

Summonds of pointing the Ground, is wherein the Pursuer narrates, that standing infect in an Annualrent to be uplifted out of the Lands particularized, concludes that the Heretor and Tenants should compear here, and see a Messenger, or Sheriff point the readiest Goods and Gear to be found on these Lands, yearly and termly, during the not Redemption of the Annualrent.

Summonds of Provento, is wherein the Pursuer narrates, that he having raised Letters of Horning which were suspended on most frivelous Reasons, desires the Suspender to compear, and hear the Reasons of the same debated and discussed; otherwise the Lords will sustain a Copy as principal, and allow protestation thereon.

Summonds of Registration, is when the Representative of a Granter of a Bond, is charged upon his passive Title, to allow the said Bond to be inserted, and registrate *verbatim*, in the Books of Council and Session; but now its in desuetude.

Summonds of Removal, is when a Tenant is charged to remove, which may be sometimes on six days

days: generally he must be warned forty days before the Term of *Whitsunday*.

Summons of Spulzie, is wherein the King charges the Defender for violent Ejection, taking or resetting by himself or Servants the Pursuers Goods and Gear, concluding that he should pay all the Price and Damages.

Sums Heretable, are those which go to the Heir; because his Predecessor had taken Infestment for their Security, or had excluded the Executors from them.

Sums heretable by Destination, are those Sums which the Law allows to Heirs, as designed for them by the Fiar, as if an heretable Security were taken upon a moveable Bond.

Superior, is the Granter of a Few.

Super-Intromission, is when the vitious Intromettor, tho after confirmed, fraudulently conceals some Goods, not put in the Inventory.

Super-sedeas, is a Writ or Command to stay or forbear the doing of that which ought not to be done, or in appearance of Law were to be done; were it not for that whereon the Writ is granted.

Suspension, is a stop to the Execution of Sentences, for a time.

Synodale, is Tribute in Money payed to the Bishop or Arch-Deacon by the Inferiour Clergy at Easter Visitation.

T

Tacite Relocation, is when the Master suffers the Tackf-man to continue, after the Tack is expired, paying as formerly, during the Tack.

Tack-Duty, is the Hyre given by the Tackf-man to the Setter or his Heirs, for Lands conducted.

Tainings, are Signals given to forwarn people of the approach of the Enemy.

Taxt-ward, is when the Superior, instead of the Mails and Duties due to him in Ward-holding, is content to accept a liquid Quota, or annual Prestation.

Teinds, is a part of our Goods due to God; with us, the fifth Boll of free Rent.

Teind-masters, are these who have Right to Teinds.

Tenendas, is that Clause of a Charter, which expresses what way and manner the Lands are to be holden of the Superior.

Term of Entry, is the time a Tack begins.

Theft-boot, is resetting and saving of Thieves and taking a part of the subject stollen, or joining with the Thief.

Thigsters, are a sort of gentle Beggars.

Thirlage, is that Servitude whereby the Lands of one Heretor, are to pay some Duty to the Mill of another.

Tithing, an *English* Term, signifying a certain number or company of ten Men, with their Families knit together in a Society, all being bound

to the King for the peaceable behaviour of each other.

Title, properly is when a Man hath lawful cause of Entry into Lands (by the *English Law*) whereof another is seiz'd, for which he can have no Action. In general it signifies any Right.

Titulars of Election, are those who after Popery was destroyed, got a Right to the Parsonage Teinds, which had fallen to Monasteries, because of several Parishes that had been mortified to them.

Top-annual, is an Annualrent constitute out of a House built in a Burgh.

Totted, an *English* Term, a good Debt to the King, is by the forreign Opposer or other Officer in the Exchequer noted for such, by writing this word *Tott*.

Transferring, is a Summonds wherein a Pursuer desires after narrating the whole Process, which was depending at the instance of his Predecessor, the same to be transferred active in his person.

Translation, is a Transmission from a prior Assigney to a posterior.

Transumps, is a Summonds wherein the Complainer demands, that his Rights to such and such Lands should be exhibited, and Copies judicially to be taken off them, and them to be declared Authentick Transumps, and sufficient for the Security of the Pursuer.

Traverse, is a denial of something charged for, or the overthrowing any thing.

Treasurers Remembrancer, is he whose charge it is, to put the Lord Thesaurer and the rest of the Judges

Judges of Exchequer in Remembrance of such things as are called on, and dealt in for the Kings behoof: he makes Proceſs againſt all Sheriffs, Eſcheators, Receivers and Bailiffs for their Accompts.

Treſpaſs, in England ſignifies any Tranſgreſſion of the Law under Treason, Felony or Miſprifion of either.

Treſpaſſour juſtified, ſignifies a perſon condemn'd by Law or Juſtice.

Tunnage, is a Cuſtom or Impoſt payed to the King for Merchandiſe carryed out, or brought in Ships, according to a certain Rate upon every Tun.

W

Wadſet, is a Right, whereby Lands are impignora-
ted or pledged for Security of a ſpecial Sum.

Wadſet Proper, is when the Wadſetter takes his hazard of the Rents of the Land for ſatisfaction of his Annualrent, and pay himſelf all public Burdens.

Wadſet Improper, is when the Granter of the Wadſet pays the public Burdens, the Wadſetter having his Annualrents ſecured.

Wadſetter, is he to whom a Wadſet is granted.

Wakening, is a Summons narrating, that the Complainer had raiſed a Summons which he had let ſleep for year and day, concluding that all perſons cited in the firſt ſhould compear, hear and ſee the foreſaid Action called and wakened, and debated till Sentence be given.

Ward-holding, is that where the Superior hath a Right to all the Mails and Duries of the Few, during the Minority of the Vassal: As also he hath Right to the Vassals Marriage in the Terms of Law: it is *Servitium militare*.

Wapentakes, an *English* Term, signifying the same with hundreds.

Warrandice from Fact or Deed, is when the Granter warrants against all Deeds of himself past or to come.

Wharfe, is a broad plain place near a Creek, or Hith of the Water to lay Wares on, that are brought to, or from the water.

Widows Terce, is a Right the Wife hath after her Husbands Death, to a Third of all the Rents, he dyed infest of, during Life.

Writ, is the Queens Precept; whereby any thing is commanded touching a Suit or Action.

Writ of Certiorari, an *English* Term, is a Writ out of the Chancery to an Inferiour Court, to call up the Records of a Cause, therein depending, that conscionable Justice may be therein administered, upon Complaint made by Bill, that the Party which seeketh the said Writ hath received hard dealing in the said Court.

Writ of Error, is properly that which lyeth to redress false Judgement, given in any Court of Record.

Udale Rights, are those which are proven by Witnesses, as to their Possession, and need no Infeftment,

feftment, which obtains only in *Orkney* and *Zetland*.

Ultimus Heres, is the King who succeeds, failing all Relations.

Union, is a Clause in an Infeftment, whereby Lands or Tenements, lying difcontigue, are incorporated, fo that one Seafine may fuffice for them all.

Ufury, is when the Wadfetter is fecured in more than his Annualrent, and yet the Granter pays the publick Burdens; or taking of more than the legal Annualrent any other way.

V

Vafal, is he who hath Lands, immediatly holding of the Superior.

Verdict, is the answer of a Jury, made upon any Cause Civil or Criminal, committed by the Court to their Examination.

Viccarage Teinds, are small Teinds of Lambs; Wool, Eggs, due to the Viccar, who ferves the Cure.

Vicious Intromiffion, is when any intromets with the Defuncts Moveables without Confirmation, or other probable Title.

Violent Profes, are the double avail of a Tenement within a Burgh, and the higheft advantages an Heretor could have got for the Lands in the Country, payable by the Tenant, for refufing to remove.

Voluntary

Voluntar Redemption, is when the Wadsetter receives his Money, and renounces voluntarily.

Voucher, signifies when the Tenant calls another into the Court, that is bound to him to warranty.

P I N I S

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